Integrated Planning and Other Legislation Amendment Bill 2006

Explanatory Notes

Introduction

This Bill includes a series of technical amendments to the *Integrated Planning Act 1997* in the areas of currency periods, referral coordination and referral assistance, infrastructure charges and accountability for assessment managers. The Bill also includes amendments to other provisions of the *Integrated Planning Act 1997* (IPA) designed to clarify or improve its operation and resolve irregularities, and a series of minor clarifying amendments to other legislation.

In order to be able to properly read and interpret the Bill it is necessary to read the Bill together with the current reprint version of the *Integrated Planning Act 1997*.

General Outline

The Bill consists of:

- Amendments to the *Integrated Planning Act 1997* to reflect changes to currency period arrangements, referral coordination, infrastructure charges and accountability of assessment manager decision making;
- Other technical and clarifying amendments to the *Integrated Planning Act 1997*;
- Amendments to the *Coastal Protection and Management Act 1995* to include a definition for "tidal works";
- Amendments to the *Currumbin Bird Sanctuary Act 1976*;
- Amendments to the *Environmental Protection Act 1994*;
- Amendments to the *Nature Conservation Act 1992*;
- Amendments to the *Townsville City Council (Douglas Land Development Act) 1993*;
- Amendments to the *Building Act 1975*;

- Amendments to the *Wet Tropics World Heritage Protection and Management Act 1993*; and
- Amendments to the *Plumbing and Drainage Act 2002*.

Policy Objectives of the Legislation

The objectives of the legislation are to:

- Reform current arrangements for the lapsing of development approvals;
- Discontinue the referral coordination and referral assistance processes;
- Require assessment managers to give reasons for departures from their planning schemes in order to improve accountability for decisions;
- Require assessment managers with websites meeting technical standards stated in a guideline approved by the chief executive to post electronic copies of decision notices searchable by parameters stated in the guidelines In this way assessment managers' (particularly local government) decisions will be more accessible to the community;
- Define the term 'planning grounds' for decision rules for impact assessable development applications and making a decision in conflict with a planning scheme;
- Carry out a series of amendments to the infrastructure arrangements under the IPA to make them more flexible and responsive to local governments' needs;
- Clarify a number of IPA provisions and address certain operational matters; and
- Make several minor mechanical amendments to other environmental and building legislation.

Reasons for the Bill

The Bill has been drafted to address issues with the application of currency periods for development approvals, and to streamline the Integrated Development Assessment System (IDAS).

Achieving the Objectives

The objectives of the Bill are achieved primarily by:

- Clarifying linkages between currency periods for different types of approvals;
- Removing referral coordination and referral assistance from the Integrated Development Assessment System;
- Inserting provisions requiring assessment managers to include reasons for decisions, and publish decision notices on their websites;
- Extending the period within which local governments can use transitional infrastructure charging arrangements, and making other technical and clarifying changes to infrastructure planning and charging arrangements; and
- Improving and clarifying IPA through removing any irregularities and resolving operational issues.

Administrative Costs

While some reforms may require administrative rearrangements, net administrative savings are expected.

Long term cost benefits are foreseen, particularly as a result of the removal of referral coordination.

Fundamental Legislative Principles

The legislation is consistent with fundamental legislative principles and seeks to clarify and improve the rights and liberties of individuals.

The amendments to the *Townsville City Council (Douglas Land Development Act) 1993* include the retrospective validation of past amendments to the Townsville planning scheme. This validating provision will have a beneficial effect for individuals affected by these amendments, by clarifying their existing land use rights under the planning scheme.

Clause 39, which replaces the existing arrangements about the currency of development approvals, includes a provision (section 3.5.21(5)) which applies the new arrangements to approvals already given. This provision will not disadvantage any individual, and will have a beneficial effect for some individuals with development approvals affected by the provision, as it will lengthen the currency period for the approvals.

Consultation

Consultation about the Bill has been carried out with key stakeholders including the Local Government Association of Queensland (LGAQ), Urban Development Institute of Australia (UDIA), Queensland Environmental Law Association, Queensland Law Society, and State agencies likely to be affected by the Bill.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 states the short tile of the Bill.

Commencement

Clause 2 states the commencement arrangements for the Bill.

Part 2 Amendment of Integrated Planning Act 1997

Act amended in pt 2

Clause 3 states this part amends the *Integrated Planning Act 1997*.

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

Clause 4 amends subsection (2) to omit the phrase "under this Act".

This subsection allows a planning scheme to vary a code for prescribed tidal works, even though the works may be outside the planning scheme area. When this subsection was included in the IPA, it was proposed to include the prescribed tidal works code under the *Integrated Planning Regulation 1998* (IP regulation), hence the reference in this subsection to a code for prescribed tidal work "under this Act". The code has in fact now

been included under *the Coastal Protection and Management Regulation 2003.* The amendment reflects this.

Replacement of s 2.1.8 (Consolidating planning schemes)

Clause 5 replaces section 2.1.8. The new section includes clarifications to the process for making a consolidated planning scheme, and includes a requirement to give the chief executive a copy of the consolidated scheme. Schedule 1 includes the requirement for giving copies of approved schemes and amendments to the Chief Executive, however preparing and adopting consolidated planning schemes is not carried out under schedule 1. Consequently the requirement to give copies of planning schemes and amendments to the chief executive does not currently apply to actions under these two sections.

Amendment of s 2.1.8A (Amending planning scheme to state compliance with State planning policy)

Clause 6 amends section 2.1.8A to include a requirement to give the chief executive a copy of a planning scheme amended to reflect compliance with a State planning policy. As for section 2.1.8, there is currently no requirement to give the chief executive a copy of the amended scheme, as schedule 1 does not apply to the amendment.

Amendment of s 2.1.10 (Extent of effect of temporary local planning instrument)

Clause 7 amends s 2.1.10 to clarify the intent of the existing provision concerning how a Temporary Local Planning Instrument (TLPI) affects a planning scheme. The current term "cannot amend a planning scheme" may suggest a TLPI is in fact capable of amending a planning scheme, and that the Act infers some sanction for doing so. The amendment is intended to confirm that, regardless of what relationship a TLPI purports to establish with a planning scheme, it does not amend the scheme.

The amendment also clarifies the role of a TLPI with respect to the superseded planning scheme and compensation arrangements under Chapter 4 Part 5, by confirming that implementing a TLPI is not a "change" to the relevant planning scheme for that part.

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

Clause 8 amends s 2.1.18 by inserting subsection (3), clarifying that documents under development approvals, such as plans, are not considered to be "documents" under this section. IPA planning schemes may sometimes "call up" documents forming part of older development approvals or rezoning approvals, to ensure the rights or obligations under those approvals continue with respect to particular premises. It was not intended that documents of this nature be first made as planning scheme policies in order have effect.

Amendment of s 2.1.22 (Repealing planning scheme policies)

Clause 9 amends subsections (5) and (6) of s 2.1.22 to allow the repeal of a planning scheme policy to take effect on a later day, if a planning scheme repealing the policy also starts on the later day. This section currently states planning scheme policies are repealed on the day the adoption of the relevant planning scheme is notified in the gazette. However, s 2.1.7 allows a planning scheme to come into effect on a later day stated in the gazette notice about the adoption of the scheme. This could potentially leave a gap in the effect of the relevant policies.

Amendment of s 2.2.1 (Local Government must review planning scheme every 8 years)

Clause 10 amends s 2.2.1 to remove an incorrect reference.

Replacement of s 2.3.2 (Power of Minister to direct local government to take action about local planning instrument)

Clause 11 replaces s2.3.2, concerning the power for the Minister to direct a local government to take an action about a local planning instrument. The reason for the replacement is to allow for a direction to be made about a proposed local planning instrument, not merely a local planning instrument already in effect.

Amendment of s 2.5A.12 (The SEQ regional plan may include regulatory provisions)

Clause 12 amends subsection (2) of s 2.5A.12 to include a reference to criteria for the assessment of development, as the current arrangements provide only for the inclusion of a code in the regulatory provisions.

Replacement of s 2.5A.20 (Minor amendments of SEQ regional plan)

Clause 13 replaces section 2.5A.20 to allow for the regional planning Minister to approve amendments to the SEQ regional plan, being minor amendments, or amendments to include local growth management strategies or structure plans. Section 2.5A.20 currently includes a shortened amendment process, only for minor amendments to the SEQ regional plan.

Local Growth Management Strategies and Structure Plans are intended as an interim arrangement to convey the effect of some of the key elements of the regional plan at a local scale, including for example the location of key transit oriented development locations, activity centres, priority infrastructure areas and major infrastructure, pending the amendment of planning schemes to reflect these matters.

Local Growth Management Strategies and Structure Plans are intended to be prepared by local governments under guidelines produced by the Office of Urban Management. These guidelines provide for public consultation about proposed Local Growth Management Strategies and Structure Plans.

It is also proposed that Local Growth Management Strategies and Structure Plans will be adopted as amendments to the SEQ regional plan. In this way they will, in common with other aspects of the regional plan (other than the regulatory provisions), "fall away" as considerations in development assessment once the relevant planning scheme is amended to reflect them. As they will have been subject to public consultation as part of their preparation, this amendment allows for a shortened process for including them under the SEQ regional plan, in order to avoid duplication. The definitions of Local Growth Management Strategy and Structure Plan both require the regional planning Minister to be satisfied about the public consultation carried out for these documents. Consequently, adequate public consultation is integral to the documents' definitional character.

Insertion of s 2.6.5A (Relationship of designation to State Development and Public Works Organisation Act 1971)

Clause 14 inserts new section 2.6.5A. Subsection (1) clarifies that the section applies if a designation is made for land included within a State development area declared under the *State Development and Public Works Organisation Act 1971*. Subsection (2) states that despite section 84 of the *State Development and Public Works Organisation Act 1971*, use of the designated land for purposes consistent with the designation is taken to be a use consistent with the intent of the development scheme for the State development area, and is not a use that contravenes section 84 of the Act (particularly in terms of subsections (2) and (4)).

This amendment means development for the designated purpose does not require approval under the development scheme for the State development area.

Amendment of s 2.6.7 (Matters the Minister must consider before designating land)

Clause 15 amends subsection (1) of section 2.6.7 to introduce subsection (d) to require a Minister proposing a designation to which section 2.6.5A applies (i.e. a designation in relation to land included with a declared State development area under the *State Development and Public Works Organisation Act 1971*), to be satisfied the designation has taken adequate account of the approved development scheme for the State development area.

Although not a statutory requirement under this clause, it is anticipated in order to fulfil this requirement, that the designating Minister will consult with and obtain the agreement of the Minister responsible for the *State Development and Public Works Organisation Act 1971* to any proposed designation within a State development area. This consultation is to ensure the proposed designation was not for purposes contrary to the approved development scheme or that would prevent other development in accordance with the approved development scheme from being carried out.

Clause 15 also amends subsection (2) of s 2.6.7, which previously provided for the designator to consider planning schemes and State planning policies. The amendment adds consideration of the SEQ regional plan in appropriate circumstances prior to designation.

Clause 15 also amends subsection (3)(e) of s 2.6.7 to clarify that this section applies for an EIS even if the EIS includes an assessment of development other than the community infrastructure.

Amendment of s 2.6.15 (When designations do not cease)

Clause 16 amends s 2.6.15 to clarify the application of this section to public sector entities such a Government Owned Corporations (GOC's). It is intended GOC's should be treated in the same way as a State Department with respect to when designations cease. Consequently, a reference to "State" has been replaced with "public sector entity".

Amendment of s 3.2.1 (Applying for development approval)

Clause 17 amends s 3.2.1 to make clear the scope of this provision, simplifying it while clarifying its meaning. Subsection (5) requires that an applicant effectively obtain the consent of a particular State agency responsible for managing a State resource before making a development application involving the resource. However, the phrase "taking or interfering" under subsection (11) is unclear with respect to State land.

Subsection (11) also unintentionally narrows the scope of the provision because it specifically refers to State land and does not cover freehold land held or administered by the State. Consequently subsection (11) has been removed and the application of subsection (5) has been generalised by removing the words "taking or interfering with" for clarification. It is not intended however that the scope or intent of the arrangements change.

Clause 17 also amends subsection (5) of s 3.2.1 to allow for the document including evidence given under that subsection to also state a day by which the evidence must be submitted with a development application. Resource manager's consent is currently not time limited and as a result, evidence could be submitted long after it ceases to be accurate or relevant. It is intended that, if the evidence is not submitted with a development application by the stated day, new evidence under this subsection would need to be obtained.

Amendment of s 3.2.3 (Acknowledgement notices generally)

Clause 18 omits subsection (2)(a)(vi) of s 3.2.3, which contains a redundant reference to clearing vegetation on freehold land under the *Vegetation Management Act*.

Subsection (2)(f) of the same section has also been omitted to remove reference to referral coordination.

Amendment of s 3.2.4 (Acknowledgment notices for development inconsistent with priority infrastructure plans)

Clause 19 includes paragraph (iv) under subsection (1)(b) to ensure consistency with the amended definition for the types of urban growth to be included in the priority infrastructure area.

Subsection (2)(a) is amended to require the acknowledgment notice to identify the nature of an inconsistency (e.g. whether the development is outside the Priority Infrastructure Area (PIA) or inconsistent with the assumptions about type, scale, location and timing of future growth), so that referral agencies can determine the scope of their conditioning powers with respect to any additional infrastructure cost conditions. This amendment is also intended to better inform the applicant of the nature of the inconsistency enabling them to determine the range of additional costs that can potentially be imposed.

Amendment of s 3.2.6 (Acknowledgement notices if there are referral agencies or referral coordination is required)

Clause 20 omits subsection (2) of s 3.2.6 in order to remove reference to referral coordination and changes the title in response to the omission of referral coordination from the section.

Amendment of s 3.2.11 (Withdrawing an application)

Clause 21 omits subsection 1(c) of s 3.2.11 as a result of the omission of referral coordination.

Amendment of s 3.2.12 (Applications lapse in certain circumstances)

Clause 22 amends s 3.2.12 to provide that, where an applicant seeks to extend an information request period before the application lapses, but the entity making the information request does not respond until after 5 days prior to the period ending, the application does not lapse until 10 days after the entity responds declining the request.

The intent of this clause is to allow reasonable time for an applicant to respond to an information request in a situation where the entity making

the information request has refused an extension to the response period after the period has expired. If the entity has not responded in that period, this clause applies even after the period for responding has ended.

Amendment of s 3.3.2 (Referral agency responds before application is made)

Clause 23 omits subsection (2)(a) of s 3.3.2 as subsection (1) sufficiently conveys that there is no obligation for the referral agency to give an early referral agency response. Subsection (2)(b) is omitted as a result of the omission of referral coordination.

Amendment of s 3.3.3 (Applicant gives material to referral agency)

Clause 24 amends subsection (3)(c) of s 3.3.3 in order to omit reference to subsection 3.3.2(2) that refers to referral coordination. This is a result of the omission of referral coordination from the Act.

Amendment of s 3.3.4 (Applicant advises assessment manager)

Clause 25 omits subsection (1)(b) because of its reference to referral coordination, which has been omitted from the Act. The remaining clauses are consequently amalgamated to form s 3.3.4(1) and any reference to subsection (1)(a) is removed.

Omission of s 3.3.5 (Referral coordination)

Clause 26 omits section 3.3.5, relating to referral coordination.

Referral coordination was previously triggered for applications with more than 3 concurrence agencies, for a list of development prescribed in the *Integrated Planning Regulation 1998*, and more recently for applications for preliminary approval under section 3.1.6. With the integration of more approvals into IDAS, referral coordination has been triggered more often, and there is evidence its application was indiscriminate, with smaller local governments often bearing a disproportionate administrative burden.

While the list of triggers in the regulation has been reduced as more approvals are integrated into IDAS, this has been more than offset by the growth in other triggers. Consequently the administrative burden of referral

coordination is not adequately offset by the value added to information requests through this process.

Replacement of s 3.3.6 and s 3.3.7 (Information requests to applicant (generally))

Clause 27 replaces section 3.3.6 and section 3.3.7 with a new section 3.3.6, modified to account for the removal of referral coordination. Section 3.3.7 has been removed in its entirety because it relates solely to referral coordination. In replacing s 3.3.6 the various subsections have been renumbered partly to reflect the removal of a subsection that relates to referral coordination and partly to reflect the previous inclusion of subsection (4A), which will now become subsection (4).

Amendment of s 3.3.8 (Applicant responds on any information request)

Clause 28 omits subsection (3) of s 3.3.8 as it deals with referral coordination.

Omission of ch 3, pt 3, div 3 (Referral assistance)

Clause 29 omits division 3 to remove references to referral assistance and referral coordination.

Amendment of s 3.3.14 (Referral agency assessment period)

Clause 30 amends this provision to remove references to referral coordination.

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

Clause 31 amends s 3.3.18(1)(d) to insert a provision allowing a concurrence agency to direct a different period for an aspect of approval to lapse under section 3.5.21.

Amendment of s 3.4.2 (When the notification stage applies)

Clause 32 amends subsection (3)(b) of s 3.4.2 as the current wording suggests that in order for this section to apply, the application can be for only one of the options identified, when in fact it is intended that the

section can apply for a combination of the options. The new provision allows for public notification not to apply if an application for preliminary approval under section 3.1.6 does not seek to change assessment levels of development, or if it does seek to change assessment levels, it seeks to change development requiring code assessment to self assessable development, and/or it seeks to increase the level of assessment. Applicants may sometimes seek to increase the level of assessment to increase certainty of achieving particular development outcomes for a site. For example, a section 3.1.6 approval may increase the level of assessment for certain commercial uses in a shopping centre to encourage a particular mix of development.

Amendment of 3.4.5 (Notification period for applications)

Clause 33 has been amended to omit reference to referral coordination.

Amendment of s 3.5.4 (Code assessment)

Clause 34 amends subsection (4) of section 3.5.4 by the inclusion of clause (d), which allows local governments to apply current infrastructure contributions in accordance with any planning scheme provisions, local planning policies or planning scheme policies. The ability to lodge a development application (superseded planning scheme) is intended to enable landowners to exercise development entitlements provided for in previous planning schemes. The provision is intended to prevent applicants lodging a development application (superseded planning scheme) simply to avoid paying current infrastructure contributions. This amendment to subsection (4) extends arrangements that already exist in relation to infrastructure charges under clause (c) to the current transitional infrastructure charging arrangements.

Amendment of s 3.5.5 (Impact assessment)

Clause 35 amends section 3.5.5 with a similar intent and effect to the amendment to section 3.5.4 described above.

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

Clause 36 amends s 3.5.13. Changes to this and the following section are partly to achieve consistency and partly to link to a new definition of "grounds" under schedule 10.

The amendment seeks to capture the sense of the term "sufficient" as opposed to the previously used term "enough". It is meant to imply not only a given quantum of grounds (as at present), but also a qualitative value in relation to conflict with a code

The amendment has inserted the phrase "despite the conflict" into both section 3.5.13 and section 3.5.14 to more clearly relate the consideration of grounds to the fact that there is a conflict. It is not an open-ended consideration of grounds for departure as implied by the current wording, but an evaluation that must be made in the context of the existence of a conflict with the relevant code.

This section establishes one basis upon which an assessment manager's decision might depart from its laws and policies. Another basis is if the assessment manager is directed by a concurrence agency to make a particular decision. This applies equally to s 3.5.14.

This amendment does not affect the current requirement that the assessment manager's decision to depart from the code must be taken having regard to the code's purpose, relevant State planning policies and the SEQ regional plan.

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

Clause 37 amends subsection (2)(b) of section 3.5.14 to remove the term "planning" from the phrase "planning grounds". The term "planning" in section 3.5.14 originally reflected an expectation that impact assessment would involve consideration of "planning" issues, whereas code assessment under section 3.5.13 could involve an assessment that may involve technical codes such as those containing building or engineering standards. This distinction has proved somewhat arbitrary in practice.

In addition, a definition of "grounds" for sections 3.5.13 and 3.5.14 has been included in schedule 10 in this Bill, which provides an indication of the nature of relevant grounds applicable to both sections.

Amendment of s 3.5.15 (Decision notice)

Clause 38 amends subsection (2) by inserting a requirement (paragraph (k)) for an assessment manager to give reasons for any departure from the laws and policies the assessment manager was required to consider when assessing a development application. At present, only reasons for refusal are required. Paragraph (e) has also been modified accordingly. The

provision is intended to give applicants and the community generally an indication of the way in which the assessment manager reached its decision.

At present, a decision notice is only required to give reasons for a refusal of a development application. However, it is often more important for applicants, submitters and the general public to be aware of reasons for a decision generally (whether it is approved or refused), in particular where that decision departs from the assessment manager's policy framework.

A subsection (2A) has also been inserted to confirm that a requirement to give reasons for a decision about a development approval does not require reasons to be given for each condition of the approval. Concern has previously been expressed that section 27B of the *Acts Interpretation Act 1954* (AIA), relating to standards applying to the giving of reasons, would impose onerous requirements on assessment managers if applied for each condition of a development approval. It is not intended that each condition be supported by detailed findings and evidence as required under the AIA.

Replacement of ss 3.5.21 ~ 3.5.23

Clause 39 replaces sections 3.5.21 to 3.5.23, dealing with currency periods for development approvals. The replaced provisions reflect the following reforms to the currency period arrangements:

- The current default periods for the currency of approvals (four (4) years for material changes of use and reconfiguration, and two (2) years for other approvals) are retained;
- Modifications contained in subsections (1) and (2) clarify the currency of approvals implemented in stages. Subsection (1) states a development approval (i.e. either a preliminary approval or development permit) for a material change of use lapses if the first use does not start within the relevant period stated in that subsection. Similarly, subsection (2) states a development approval for reconfiguring a lot lapses if a plan under section 3.7.2(2) for the reconfiguration is not submitted within the relevant period stated in that subsection. There has in the past been uncertainty about the currency of approvals implemented in stages, in particular preliminary approvals. The wording (underlined above) is intended to clarify that an approval is preserved if the first use or the first plan under a staged approval starts/is submitted. Although the start of the first use or lodging of the first plan preserves the approval under these

- subsections, the lapsing of staged approvals in these circumstances may also be influenced by any conditions about completion times, provided for under section 3.5.21A.
- The term "currency period" has been removed from the Act, as it appears to have contributed to confusion about the actual scope and effect of section 3.5.21;
- The arrangements for conditioning approvals to achieve completion, and consequent lapsing if development is not completed, currently contained in section 5.3.31 have been moved to follow directly on from section 3.5.21 (section 3.5.21A). This groups together all of the arrangements in the Act for the lapsing of approvals, and together with removal of the term "currency period" is intended to provide a clearer and more complete picture of the range of tools available to assessment managers to manage the currency and lapsing of approvals;
- The beginning of the relevant periods for approvals for material changes of use and reconfiguration will "roll forward" in some circumstances to align with the beginning of those for "related approvals". A "related approval' is defined for both material change of use and reconfiguration approvals at the end of the section, and contains the following key elements:
    - It is an approval for an application made to a local government or private certifier. Approvals given by other assessment managers are not related approvals. Although other assessment managers are required to give relevant local governments copies of development approvals, an effective requirement for local governments to track the course of such approvals for a given project may create administrative difficulties, if the local government does not for example link such approvals to particular premises or approvals given by the local government itself;
    - The application for the approval must be made within 2 years of a previous related approval taking effect. This is intended to ensure the "rolling forward" arrangements apply only for projects which continue to progress towards completion. Approvals for which there is no related approval will effectively "default" to the arrangements in subsections (1) and (2), which are essentially the same as the previous arrangements. Similarly, if the "chain" of related approvals is broken (i.e. a further

application is not made within 2 years of the last related approval taking effect) the lapsing of the earlier approval will stay linked to the last related approval, and any necessary extensions will need to be sought under section 3.5.22;

— The definitions of "related approval" each consist of two parts. The first part relates to the first related approval for a given approval, while the second part relates to successive related approvals. This structure reflects the relationship between preliminary approvals for material changes of use and reconfiguration, and the first development permits for this development. A preliminary approval for a material change of use or reconfiguration will "roll forward" to align with the first permit for the development. Both the preliminary approval and its related development will then "roll forward" together to align with successive related works permits. A development permit for a material change of use or reconfiguration will "roll forward" to align with the first related works approval and subsequently with any further works approvals. Paragraph (a)(ii) also makes particular provision for preliminary approvals given under section 3.1.6(3)(a)(ii) or (iii). These are preliminary approvals with provisions over-riding the effect of a planning scheme by making otherwise assessable material changes of use self assessable or exempt. As there will be no further development permit for these material changes of use, the preliminary approval will "roll forward" directly to align with the first related works permit.

- Assessment managers will still be able to both vary the currency period as part of the approval, and to condition for the completion of projects within a reasonable time. Where the assessment manager varies the currency period as part of the approval it is the varied period and not the default period that will "roll forward" to align with a related approval under the limited circumstances described above;

- The amendments have also provided an opportunity to rationalise and simplify the arrangements, notwithstanding the addition of the "rolling forward" provisions. In particular, the rolling forward arrangements effectively supersede the current special arrangements for the currency of approvals resulting from development applications (superseded planning scheme), allowing the removal of these special arrangements, and the re-ordering and simplification of section 3.5.21.

Section 3.5.21A is effectively the same as section 3.5.31(1)(c) and (2). It allows for conditions of a development approval to establish completion times for development. As indicated above, these requirements have been moved to follow directly on from section 3.5.21, to give a clearer indication of the range of provisions in the Act that affect the currency of approvals. Section 3.5.21A(1) refers to a condition "under division 6", to confirm that, despite reference to this type of condition being removed from section 3.5.31, such a condition must still meet the requirements of division 6 concerning the lawfulness of conditions.

Section 3.5.21A(4) confirms that security paid in respect of a development approval that lapses through a condition mentioned in this section may still be applied to complete the development. Amendments have also been made to section 4.3.1 to ensure if security is applied to completing development in this way, a development offence is not being committed. These arrangements for applying security to complete development contrast with section 3.5.21(5) which requires security to be released if an approval lapses before development under the approval starts.

Section 3.5.22 has been amended to include subsections (4) and (5), requiring the agreement of the chief executive of any agency administering any State resource involved with the approval. Changes previously made to s 3.2.1 to introduce an effective owner's consent for State resources meant state agencies administering those resources were no longer considered an "owner" under this section. This amendment addresses that unintended consequence.

Section 3.5.22(3) has been amended to align with changes previously made to owner's consent requirements to development applications under IPOLA 2003.

Section 3.5.23(4)(b) has also been omitted to remove duplication.

A new subsection (1) has been added to section 3.5.23 to clarify and limit the intended scope of an assessment manager's assessment of an application to extend a period made under section 3.5.22. The intention is that assessment of a request for an extension should be a relatively straightforward matter, and should not involve re-litigation of the full range of matters considered in originally approving the application. If the assessment manager considers it necessary to reconsider such matters, the scheme of the Act is that the request for extension should be refused, and a new IDAS application should be made, providing both the applicant, and in the case of development requiring impact assessment, the community, with

the full range of rights and responsibilities associated with assessing an application under IDAS.

The maters stated for consideration under section 3.5.23(1) are:

- The consistency of the approval with current laws and policies, and with any infrastructure contributions or charges currently payable. The older a development approval becomes, the less it is likely to conform with current community expectations, reflected in the relevant laws and policies applying for assessment of such development. Equally, infrastructure contributions or charges previously payable may not reflect the scope or quantum of charges now payable;
- The community's current awareness of the development approval. In some localities, population changes may mean that a significant proportion of the current community may not originally have had an opportunity to comment or make submissions about the development, and may be unaware of the development and its likely impact on its neighbourhood. This is particularly important if the development was at the time of approval, or has become inconsistent with the relevant planning scheme and other laws and policies;
- Whether if the request was refused, the community would acquire further rights to make submissions about the development, and the extent to which those rights might be exercised. This criteria is closely related to the previous point, as it may be more likely that the community would exercise available rights to make a submission if a significant proportion of the current community did not live in the area when the original application was considered and consequently did not previously exercise rights to make a submission;
- The views of any concurrence agency for the approval. As for the first point above, the development may no longer conform with current laws and policies upon which a concurrence agency would base its decision if an application for the development were made now.

The balance of section 3.5.23 is substantially similar to the current section, although some minor grammatical changes have been made.

Amendment of s 3.5.24 (Request to change development approval (other than a change of a condition)

Clause 40 inserts subsections (3)(b) and (3)(c) for the same reason subsections (4) and (5) have been added to section 3.5.22.

Amendment of s 3.5.26 (Request to cancel development approval)

Clause 41 inserts subsections (2) and (3) to section 3.5.26 for the same reason subsections (4) and (5) have been inserted into section 3.5.22.

Amendment of s 3.5.31 (Conditions generally)

Clause 42 omits subsections (1)(c) and (2) in connection with the inclusion of the new section 3.5.21A concerning lapsing of development approvals through conditions. This groups together all of the provisions in the Act dealing with the lapsing of approvals.

Amendment of s 3.5.31A (Conditions requiring compliance)

Clause 43 amends subsection (1) of section 3.5.31A to clarify when compliance assessment is triggered. The previous wording, particularly the use of the word "may" in the first line of the paragraph, may have implied that the use of compliance assessment for a type of condition prescribed under a regulation is discretionary. In fact it was intended to imply that the imposition of a prescribed condition is discretionary, however once imposed, the compliance assessment process must be used.

Amendment of s 3.5.33 (Request to change or cancel conditions)

Clause 44 amends subsection (3) of section 3.5.33 for the same reason subsections (4) and (5) have been added to s 3.5.22.

Amendment of s 3.7.2 (Plan for reconfiguring under development permit)

Clause 45 amends subsection (2) of section 3.7.2 to reflect changes in currency period arrangements.

Amendment of s 4.1.27 (Appeals by applicants)

Clause 46 amends subsection (1)(d) of section 4.1.27 to reflect changes in currency period arrangements.

Amendment of s 4.1.28 (Appeals by submitters – general)

Clause 47 amends subsection (2)(b)(ii) of section 4.1.28 to reflect changes in currency period arrangements.

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

Clause 48 amends subsection (1)(a) of section 4.1.30 to reflect changes in currency period arrangements.

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

Clause 49 amends subsection (2) to include further exemptions in respect of an appeal against an enforcement notice. The effect of the amendment is that if the enforcement notice is about erosion or sedimentation or environmental nuisance, the notice will continue to have effect, even if there is an appeal against the notice.

Amendment of s 4.2.9 (Appeals by applicants)

Clause 50 amends subsection (1)(d) of section 4.2.9 to reflect changes in currency period arrangements.

Amendment of s 4.2.11 (Appeals for matters arising after approval given (co-respondents))

Clause 51 amends subsection (1)(a) of section 4.2.11 to reflect changes in currency period arrangements.

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

Clause 52 amends subsection (2) of section 4.3.1 to allow the use of security to complete development after development has lapsed without having committed an offence. Section 3.5.21A(4) clarifies that the security can be used to complete development after development has lapsed.

Amendment of s 4.3.2 (Self-assessable development must comply with codes)

Clause 53 amends subsection (1) to replace the phrase "when carrying out" with "for". A code may deal, not only with development itself, but also with the ongoing use resulting from development, for example opening hours or ongoing traffic management. The current wording may suggest that an offence is limited to the development phase of a project. The proposed wording clarifies the offence is intended to apply to development and its effects.

Replacement of s 4.3.7 (Giving a false or misleading notice)

Clause 54 replaces s 4.3.7. Firstly, subsection (2) has been omitted to remove reference to referral coordination and a new subsection (2) has been inserted because of a need to include an offence for providing false or misleading information.

Amendment of section 4.3.8 (Application of div 2)

Clause 55 inserts subsections (h) and (i) into section 4.3.8 to include further exceptions from giving a show cause notice, before issuing an enforcement notice, in respect of development the assessing authority reasonably believes is causing erosion or sedimentation, or environmental nuisance.

Amendment of s 4.3.13 (Specific requirements of enforcement notice)

Clause 56 amends s 4.3.13 to include the ability for the assessing authority to require in an enforcement notice, a compliance program demonstrating how compliance with the enforcement notice will be achieved.

Amendment of s 5.1.4 (Funding trunk infrastructure for certain local governments)

Clause 57 amends section 5.1.4(2), which currently prevents a local government from using a mix of Infrastructure Charges Schedules (ICS) and Regulated Infrastructure Charges Schedules (RICS or 'regulated charges') to levy infrastructure charges in their areas. The 'regulated charges' mechanism allows a maximum charge of $1500 per lot or dwelling unit for each infrastructure network (with equivalent rates

specified for commercial and industrial development). As such it is most attractive for rural and regional councils. The current restriction is counterproductive and needs to be removed by deleting subsection (2).

The amendment would allow a local government to use an ICS to levy charges in excess of the amount able to be obtained under a 'regulated charge' for those networks (generally water supply and sewerage) for which detailed planning has been undertaken (and for which a higher charge can be adequately justified), whilst still being able to adopt 'regulated charges' for the remaining networks. The amendment would also allow a local government to use a mix of ICS and policies for infrastructure contributions whilst s6.1.31 is still in effect, provided charges or contributions for a particular network in a particular area were only payable under one charging instrument (either an ICS, RICS, Infrastructure Charges Plan or policy in accordance with the restriction imposed by s6.1.20(3)).

Amendment of s 5.1.5 (Making or amending infrastructure charges schedules)

Clause 58 amends section 5.1.5 to clarify that an Infrastructure Charges Schedule (ICS) can be made using the process specified in Schedule 1 or Schedule 3. Subsection (4) has been added to clarify that when an ICS has been prepared using the schedule 3 process it is nevertheless part of the planning scheme and not a planning scheme policy.

Amendment of s 5.1.6 (Key elements of an infrastructure charges schedule)

Clause 59 amends section 5.1.6 to allow local governments to state charges as either a monetary amount or as a number of charge units. This amendment is intended to provide greater flexibility to local governments in calculating charges and make the task of indexing charges over time easier. To ensure adequate accountability, the value of a charge unit must be set by Council resolution (subsection (4)), and must be stated in the local government's infrastructure charges register (subsection (5)). Similarly, in the interests of transparency, the local government must identify and method for indexing the amount of a charge unit and the information to be relied on in the relevant Infrastructure Charges Schedule/s (subsection (6)).

Amendment of s 5.1.10 (Application of infrastructure charges)

Clause 60 amends section 5.1.10 to provide flexibility for local governments and the Department of Main Roads to spend charges on the infrastructure that delivers the best outcome for users regardless of ownership of the road. This amendment therefore allows charges levied for works for the local function of State controlled roads to be spent on local government roads. This provision is an extension of section 5.1.13 which allows a local government to provide different infrastructure to the items identified in the priority infrastructure plan, provided the infrastructure delivers the same standard of service. Because the planned infrastructure related to the State controlled road network, the owner of the State controlled road must be consulted about and agree to the different infrastructure. An example of this might be constructing a new local government road to provide alternative access to an area in lieu of providing additional capacity on the existing State controlled road running through the area.

Amendment of s 5.1.24 (Conditions local governments may impose for necessary trunk infrastructure)

Clause 61 contains a series of minor amendments to introduce terminology that is more consistent with that used elsewhere in Chapter 5, Part 1 and related provisions.

Amendment of s 5.1.29 (Requirements for conditions about safety or efficiency)

Clause 62 amends section 5.1.29 to introduce a requirement for State infrastructure providers to repay contributions for works to maintain the safety and efficiency of State infrastructure if the approval in respect of which the contribution was required lapses and the development does not proceed. These provisions mirror existing requirements under section 5.1.30 and apply them in a wider range of circumstances.

Amendment of s 5.1.30 (Requirements for conditions about additional infrastructure costs)

Clause 63 amends section 5.1.30 to clarify that a State infrastructure provider only has to repay the proportion of any additional infrastructure cost payment that remains unspent at the time the provider is informed the approval for which the payment was made has lapsed. This amendment

has also been incorporated into the equivalent provisions under section 5.1.29.

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

Clause 64 amends subsection (1)(a) of s 5.4.4 to clarify that introducing a Temporary Local Planning Instrument (TLPI) prior to amending a local planning scheme does *not* negate a person's right to compensation under Chapter 5, Part 4.

Subsection (ea) is included to clarify that compensation is not payable if the change relates to the matters dealt with in a planning scheme policy prepared under section 6.1.20. This means a change to a policy that results in a change in the infrastructure contributions payable under the policy (such as an increase in the contributions or contributions being levied for additional infrastructure networks), would not give rise to compensation.

Amendment of s 5.4.9 (Calculating reasonable compensation involving changes)

Clause 65 amends subsection (3) of section 5.4.9. The amendment is one of several changes concerning Temporary Local Planning Instruments (TLPI). The amendment clarifies that the effect of any TLPI should be disregarded in calculating the "before" value for compensation purposes. This is because a TLPI establishes a "holding pattern" prior to any substantive change to a planning scheme and is not in itself a change for a planning scheme.

Amendment of s 5.5.1 (Local government may take or purchase land)

Clause 66 amends subsection (1)(b)(i) of section 5.5.1. This section is intended to facilitate the purchase or taking of land for downstream drainage purposes by a local government if an applicant has been unsuccessful in negotiating appropriate drainage arrangements with downstream owners. The original explanatory notes for this section indicate that the section was intended to carry forward the intent of a similar section under the repealed Act. However, the use of the word "the" in qualifying the term land in this section suggests, in conjunction with the referential provisions in s 1.3.8, that only land the subject of the application can be so acquired. This would be extremely limiting, and inconsistent with

the original intent of the provision, and the provision in the repealed Act it replaced. This clause amends subsection (1)(b)(i) of section 5.5.1 by omitting the word "the" so as to make the provision applicable to land generally.

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

Clause 67 amends section 5.7.2. The amendment is related to the changes to section 5.1.6 and requires the infrastructure charges register to state the amount of an infrastructure charge unit as determined by local government resolution. This requirement would apply where one or more of the local government's Infrastructure Charges Schedules states the applicable charges as a number of charge units rather than a monetary amount.

Amendment of s 5.7.4 (Documents assessment manager must keep available for inspection and purchase)

Clause 68 inserts a new subsection (3) requiring that, if the assessment manager maintains a web site with technical capabilities of a type stated in guidelines approved by the Chief Executive, the assessment manager must publish decision notices on the website in a way stated in the guidelines. This amendment is related to the amendment of s 3.5.15, requiring decision notices to include reasons for departures from planning instruments, allowing for greater public scrutiny of decision-making.

The proposed guidelines would require decision notices to be searchable by key parameters such as by date, development type or location. The guidelines would also establish the technical capabilities of websites to which this requirement would apply.

Most assessment managers maintain a website, however not all such websites would have the technical capacity to search data in the way contemplated by the guidelines. It is not intended that assessment managers be required merely as a result of this provision to upgrade websites to allow for the necessary technical capacity. However if the assessment manager already maintains, or upgrades a website in a way that meets the necessary technical capacity, the requirements will apply.

This clause also inserts subsection (4) to provide that subsection (3) does not apply for decisions given by private certifiers.

Amendment of s 5.8.14 (How IDAS applies for development the subject of an EIS)

Clause 69 amends subsection (2)(b) of section 5.8.14 to change section references to reflect the removal of referral coordination and referral assistance.

Amendment of s 5.9.9 (Chief executive may issue guidelines)

Clause 70 amends subsection (1) of section 5.9.9 by adding paragraph (c) to allow for the publication of decision notices on a website maintained by the assessment manager.

Subsection (1)(d) has also been added to allow the chief executive to make guidelines about the form in which local planning instruments are to be submitted to the chief executive under schedules 1,2, and 3.

Amendment of s 6.1.20 (Planning scheme policies for infrastructure)

Clause 71 amends section 6.1.20. Subsection (2) currently specifies certain matters a policy prepared under this section must include. These matters generally relate to the infrastructure contributions a local government was able to obtain under the repealed *Local Government (Planning and Environment) Act 1990*. Due to the delays many local governments have experienced in completing their IPA planning schemes, few local governments have made significant progress in developing their Priority Infrastructure Plans (PIPs) and related Infrastructure Charges Schedules. Consequently, there has been a greater reliance by local governments on local planning policies and planning scheme policies under section 6.1.20 to obtain contributions towards the cost of required infrastructure in the period prior to the adoption of the PIP. The formerly limited scope of subsection (2) was a possible impediment to this approach, as the section generally lacked guidance on the intended scope and application of the policies prepared under it.

As a result, subsection 6.1.20(2) has been substantially amended to provide greater guidance about the requirements for preparing a planning scheme policy about infrastructure. These requirements are similar to the requirements for an Infrastructure Charges Schedule under section 5.1.6 and related sections, with modifications to account for the contributions being implemented by way of a condition rather than an infrastructure charge.

Key issues to note are that such policies can apply to all development infrastructure networks that can be charged for under the IPA, and not simply those for which contributions could be obtained under the repealed Act. Subsection (2C) also allows the contribution to be calculated in the way permitted under the repealed Act, or, as if it were an infrastructure charge under the IPA. The former is to accommodate local governments who simply want to 'roll over' their existing 'headworks' policies into their IPA planning schemes, whilst the latter is intended to allow those local governments that have undertaken substantial work on their Priority Infrastructure Plans and Infrastructure Charges Schedules to begin implementing elements of this work though planning scheme policies. Specifically, this would allow local governments to apply infrastructure charging methodologies in calculating the contribution, and to require a contribution for additional infrastructure networks.

It is however important to remember that all infrastructure contributions are imposed by way of conditions on a development application, meaning they apply to a more limited range of assessable development than infrastructure charges. Any such conditions can also be appealed to the Planning and Environment Court and will be subject to the normal 'reasonable and relevant' test.

Subsection (3) is amended to include reference to Infrastructure Charges Schedules (ICS) and Regulated Infrastructure Charges Schedules (RICS) to ensure that the provision applies in respect of all charging instruments, including Infrastructure Charges Plans (ICP). This provision is intended to prevent infrastructure contributions being levied on a development which is also subject to infrastructure charges for the same network under an ICP, ICS or RICS. Reference to ICPs is retained as any existing ICPs continue to have effect under section 6.2.5.

IPA schemes repeal all existing policies when they commence. If this occurs after the date specified in 61.20(4), local governments will not be able to adopt new transitional infrastructure contributions policies. This clause amends subsection (4) to extend this date until 30 June 2007, with the Minister able to further extend it on an individual basis.

Amendment of s 6.1.21 (IPA planning schemes cancel existing planning scheme policies)

Clause 72 amends subsection (1) of section 6.1.21 to allow for the cancellation of policies on a later date if the relevant planning scheme starts also starts on a later date. While section 2.1.7 allows for a planning scheme

to fix a date for its own commencement later than the date the commencement is notified in the gazette, section 6.1.21 has previously cancelled local planning policies from the gazette date through omitting reference to them. This clause consequently includes reference to planning schemes starting on a later date as fixed in the scheme in order for local planning policies to apply until the commencement of the planning scheme.

Amendment of s 6.1.31 (Conditions about infrastructure for applications)

Clause 73 amends subsection (3) of section 6.1.31 to extend the period in which local governments can use planning scheme policies or planning scheme provisions to obtain infrastructure contributions from 31 March 2006 to 30 June 2007. The amendment is necessary to give local governments sufficient time to adopt their IPA planning schemes, and then prepare, publicly notify and adopt their Priority Infrastructure Plans and Infrastructure Charges Schedules or Regulated Infrastructure Charges Schedules.

Subsections (4) and (5) are redundant provisions related to benchmark development sequencing and have been omitted.

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

Clause 74 amends subsection (5) of section 6.1.54 to reflect the removal of referral coordination.

Amendment of s 6.5.1 (When particular development approvals lapse)

Clause 75 amends subsections (2) and (3) of section 6.5.1, and replaces subsections (4) and (5).

The date in subsection (2) has also been extended from 30 March 2006 to 30 June 2006.

Subsections (4) and (5) have been replaced to clarify applicants affected by these transitional arrangements may apply for an extension of the effect of the transitional provisions in the same way an application may be made to extend a currency period under s 3.5.22.

The new arrangements for the lapsing of approvals contained in clause 39 will apply for development approvals that are in effect on or after the commencement of those provisions, but not those that are in effect solely because of section 6.5.1(See clause 76 below).

In other words, the new arrangements will not apply to approvals that, were it not for the effect of section 6.5.1, would have lapsed before the commencement of the new arrangements. Consequently this clause extends the effect of section 6.5.1 from 30 March 2006 until 30 June 2006, so approvals that would have lapsed upon its expiry will be saved until at least then. The changes to subsections (4) and (5) are also designed to clarify these approvals can be further extended beyond 30 June 2006 using the processes for requesting and deciding and extension in sections 3.5.22 and 3.5.23.

Insertion of new ch 6, pt 7

Clause 76 inserts a new Part 7 for chapter 6, containing transitional arrangements for several of the provisions in this Bill

Section 6.7.1 provides that if an application is undergoing the referral coordination process at the time of commencement, the process will be completed as though referral coordination were still provided for under the Act. However the intent is not for the applicant to repeat referral coordination if it has already been undertaken.

Section 6.7.2 contains transitional arrangements for the new currency and lapsing arrangements for development approvals. As indicated above, this section establishes that the new arrangements in s 3.5.21 will not apply to development approvals that were saved only by the effect of s 6.5.1. However, the new arrangements will apply to other approvals whether given before or after its commencement.

Section 6.7.3 is aimed at ensuring that for applications made but not decided when the amendments to s 3.5.13 and 3.5.14 and the definition of grounds took effect, the new terminology about sufficient grounds in those sections, and the related definition do not apply for assessing and deciding the application.

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

Clause 77 amends section 19, which currently only requires public notification if a local government decides to proceed with adopting a

planning scheme or amendment. However the interests of submitters and other persons may also be affected by a decision not to proceed.

Section 8A has also been amended to correct terminology in order to maintain consistency.

Part 3, section 21(b) has also been amended to accommodate amendments made in s 5.9.9(1)(d).

Amendment of sch 2

Clause 78 amends part 2, section 5(b) to accommodate amendments made in s 5.9.9(1)(d).

Amendment of sch 3 (Process for making or amending planning scheme policies)

Clause 79 inserts subsection (4)(a) into part 2 of schedule 3 to extend the shortened process for minor amendments to planning scheme policy. The definition of "minor amendment" in Schedule 10 refers to a minor amendment of a planning instrument. However, at the moment Schedules 1 and 4 (planning schemes and State planning policies) are the only processes allowing for a shortened process for such amendments. It is reasonable to extend the shortened process for minor amendments to planning scheme policies.

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

Clause 80 contains a number of minor clarifying amendments.

Amendment of sch 8A (Assessment manager for development applications)

Clause 81 amends schedule 8A. The current wording in tables 1, 2 and 3 (item 3) can be interpreted in a number of ways when tidal works are not completely within one jurisdictional area. The amendment will clarify assessment manager responsibilities when tidal works overlap two jurisdictional areas and will result in a more accurate determination of applications that should be forwarded to the Minister under Table 5.

The phrase "any aspect of the development…" has been inserted at the beginning of Table 1, item 1(a)(i). This provision is intended to ensure that,

for development wholly in a single local government area, if any part of the development application is assessable under a planning scheme, then the relevant local government is the assessment manager. However the current wording could infer that all of the development the subject of the application must be assessable under the relevant planning scheme in order for this provision to apply.

Table (1), item 1(d) is amended to use the wording used in paragraphs (b) and (c) and replaces an incorrect reference to the local government area.

Table 3, item 6(a)(i) to clarify that the Chief Executive administering the Coastal Protection and Management Act 1995 (the Environmental Protection Agency) is the assessment manager for tidal works that are completely outside of local government tidal areas and strategic port land tidal areas. This amendment also allows for applications for tidal works not assessable by local government, a port authority, the Environmental Protection Agency, or the Department of Primary Industries and Fisheries to be referred to the Minister in table 5.

Recent integration of Fisheries legislation has led to several applications which, in the absence of such a provision, would need to be decided individually by the Minister. Table 4 has been amended to insert and refine assessment manager arrangements applications for development under the Fisheries Act 1994 and Coastal Protection and Management Act 1995, and for applications under the Fisheries Act 1994 and environmentally relevant activities.

Table 4, item 3 has been amended to establish that the chief executive administering the *Water Act 2000* is the assessment manager for development involving a combination of Environmentally Relevant Activities (ERA) 19, 20 and 22, removing quarry material and any of the development mentioned in Schedule 8, part 1, table 4, items 1 (A) to (G), 3 and 4 (clearing of native vegetation under the *Vegetation Management Act 1999*, taking or interfering with water, referable dam). Currently, if an applicant wishes to make a single application for these three aspects of development, taking of quarry material, dredging and clearing of native vegetation, the applicant needs to write to the Minister of DLGPSR for the Minister to determine who will be the assessment manager under Schedule 8A, Table 5, Item 1. Alternatively the applicant can make a separate application for the vegetation clearing aspect of the project. However the applicant would then receive two development permits – one for the combined taking of quarry material and ERA, and one for the vegetation clearing. To encourage determination of all three aspects at the one time at

the same time, Schedule 8A should this amendment provides for an applicant to apply to DNRMW whenever a project involves all three aspects of development.

The current wording of Table 4, item 2 refers to removal of quarry material from a watercourse or lake as defined under the *Water Act 2000* as operational work. However, under Schedule 8 of IPA, Part 1, Table 5, Item 1 all aspects of development for quarrying in a watercourse or lake are identified as assessable development. This clause amends this discrepancy.

Incorrect references have been removed from Table 6, item 1(a).

Amendment of sch 10 (Dictionary)

Clause 82 contains amendments to definitions under schedule 10.

The definition of "currency period" has been omitted to accommodate changes to currency period arrangements.

The definition of "development application (superseded planning scheme)" has been amended to clarify that the two year period to lodge a development application (superseded planning scheme) starts at the time the planning scheme, policy or amendment giving rise to the superseded planning scheme commences, not when it is adopted (as the notice of adoption can specify a later date for commencement).

The definition of "development infrastructure" has been amended to clarify that all local government supplied public parks can be planned and charged for including neighbourhood, district and City or Shire wide facilities.

The definition of "establishment cost" has been amended to clarify the costs for preparing an infrastructure charges schedule that can be recovered through infrastructure charges, the scope of costs that can be recovered through charges for previously acquired land and to allow local governments to acquire volumetric title (e.g. floor space in a building) in lieu of land for local community facilities. The latter amendment has been made because the cost of acquiring land can be prohibitive in some areas (e.g. those that are already highly developed) and, if adopted, the resulting charges would be unaffordable.

The definition of "priority infrastructure area" has been amended to correct terminology, and to clarify that community and governmental uses that support urban growth, such as schools, hospitals, and childcare centres etc, are part of the Priority Infrastructure Area.

The definition of "priority infrastructure plan" has been amended to correct terminology, and to clarify that Priority Infrastructure Plans only need to deal with networks the Local Government intends to supply or charge for and do not have to undertake planning for infrastructure networks they have no intention of providing.

The definition of "urban area", item (a) is amended to clarify that an urban area includes the land identified within the priority infrastructure area under a local government's priority infrastructure plan, but does not include any rural residential or future rural residential areas included within the priority infrastructure area. The amendment addresses an anomaly with the current definition and effectively extends the same exclusion that exists for rural residential areas under item (c) to item (a). The effect of the amendment is to ensure the relevant provisions of the *Vegetation Management Act 1999* continue to operate for non-urban or rural residential areas, even if they are included within the priority infrastructure area.

The definitions of "referral assistance" and "referral coordination" have been omitted in order to remove reference to referral assistance and referral coordination.

A definition for "grounds" has been inserted to support changes made to s 3.5.13 and s 3.5.14. The key reason for including a definition is to emphasise that grounds for departing from a planning instrument must relate to a public interest, and not a private interest or the personal circumstances of an applicant or another individual. The definition also provides several examples of possible grounds for departure from a planning instrument based on existing judicial authority. These are examples only and are not intended to detract from or constrain current or future judicial authority.

Definitions have also been included for "Commonwealth Environment Act", "draft EIS", "draft terms of reference", "environmental management plan", "EIS process", "proponent" and "terms of reference". These definitions are largely self explanatory and have been included to facilitate the commencement of the Environment Impact Statement provisions under section 5.8 of the Act.

Part 3 Amendment of Building Act 1975

Act amended in pt 3

Clause 83 states the part amends the *Building Act 1975*.

Clause 84 amends section 12Q(4)(b) of the Act to introduce a requirement for the assessment manager to refuse an application where the proposed fire management plan for the building does not adequately incorporate any proposed fire management procedures for the building.

Clause 85 replaces section 12R to introduce a random inspection regime for budget accommodation buildings. Under subsection (2), these building must be inspected at least once every three years. Subsection (3) allows inspection to be undertaken during the normal business hours of the local government and without giving prior notice to the owner of the building. Local governments are also required to maintain a register of the buildings they are required to inspect, and record the details and results of the inspections. As these provisions are a public safety measure, subsection (5) specifies that local governments are not able to charge a fee for the inspections.

Part 4 Amendment of Coastal Protection and Management Act 1995

Act amended in pt 4

Clause 86 states the part amends the Coastal Protection and Management Act 1995.

Clause 87 amends section 185 to preserve the Gold Coast scheme of works approved under section 38 of the repealed Beach Protection Act 1968 in March 1973. Preservation of the scheme of works is necessary to enable the continuation of the works stated within the scheme, which will otherwise be invalid once the Southeast Queensland Regional Coastal Management Plan takes effect. To ensure the continuation of works, the approval for the scheme of works is taken to be a development approval under the IPA and the works are taken to have substantially started, thereby

preserving the approval. To remove all doubt, all works stated within the scheme of works have substantially started.

Clause 88 omits subsection (4)(c) of section 188.

Clause 89 inserts a definition of "currency period" and amends the definition of tidal works to ensure that only "open" drains of certain dimensions are excluded from being considered as a tidal work.

Part 5 Amendment of Currumbin Bird Sanctuary Act 1976

Act amended in part 5

Clause 90 states the part amends the *Currumbin Bird Sanctuary Act 1976*.

Clause 91 amends the definition of 'National Trust' to include any wholly owned subsidiary of the National Trust.

The intent of these amendments is to allow the Currumbin Wildlife Sanctuary to operate as a commercial entity at arms' length from the National Trust.

Part 6 Amendment of Environmental Protection Act 1994

Act amended in pt 6

Clause 92 states the part amends the *Environmental Protection Act 1994*.

Clause 93 amends Schedule 1, Division 2 of the Act to include a reference to section 145P(1). The effect of the amendment is to require the administering authority to give an information notice in relation to proposed action under this section. Such a notice gives review and appeal rights.

Part 7 Amendment of Fisheries Act 1994

Act amended in pt 7

Clause 94 states the part amends the *Fisheries Act 1994*.

Clause 95 amends the schedule definition of "currency period" to reflect changes to currency period arrangements.

Part 8 Amendment of Liquor Act 1992

Act amended in pt 8

Clause 96 states the part amends the Liquor Act 1992.

Clause 97 amends the definition of "relevant period" under s4 (Definitions) to reflect changes to "currency period" arrangements.

Part 9 Amendment of Nature Conservation Act 1992

Act amended in pt 9

Clause 98 states the part amends the *Nature Conservation Act 1992*.

Clause 99 inserts s174AA. The *Nature Conservation (Wildlife) Regulation 1994*, schedule 5, sections 7 to 10 were inadvertently renumbered as sections 6 to 9. (Section 6 had previously been omitted.) Subsequently, the *Nature Conservation and Other Legislation Amendment Regulation (No. 2) 2005* (2005 SL No. 138) amended the schedule, based on the incorrect numbering. Although there was no great doubt about what was actually being amended, this amendment clarifies the position.

Part 10 Amendment of Plumbing and Drainage Act 2002

Act amended in part 10

Clause 100 states the part amends the Clause *Plumbing and Drainage Act 2002*.

Clause 101 amends the definition of "greywater application area" to allow the disposal of greywater by both surface and subsurface irrigation. The current definition suggests that disposal of greywater in both sewered and unsewered areas must be by subsurface irrigation. The amendment is required as some local governments in unsewered areas will allow treated greywater to be dispersed to a land application area by surface irrigation methods.

Part 11 Amendment of Prostitution Act 1999

Act amended in part 11

Clause 102 states the part amends the *Prostitution Act 1999*.

Clause 103 amends the definition of "currency period" to reflect changes to currency period arrangements.

Part 12 Amendment of Townsville City Council (Douglas Land Development) Act 1993

Act amended in pt 12

Clause 104 states the part amends the *Townsville City Council (Douglas Land Development) Act 1993*.

Clause 105 inserts a definition for the "Townsville IPA planning scheme" and amends the definition of "Townsville planning scheme" to refer to both the current IPA planning scheme and the previous planning scheme

prepared and adopted by the Townsville City Council under the repealed *Local Government (Planning and Environment) Act 1990*.

Clause 106 amends the title of section 30 to reflect that the procedures specified under this section relate only to the previous planning scheme prepared and adopted by the Townsville City Council under the repealed *Local Government (Planning and Environment) Act 1990* up until its replacement by the IPA planning scheme on 1 January 2005.

Clause 107 inserts section 30A to provide a process for including land developed under the Act into the Townsville IPA planning scheme. These provisions are similar to the existing provisions of section 30, but replace relevant planning scheme amendment and compensation processes under the repealed *Local Government (Planning and Environment) Act 1990* with their *Integrated Planning Act 1997* equivalents.

Clause 107 also inserts section 30B to validate any amendments made by the Townsville City Council to include land developed under the Act in its planning scheme prior to the *Integrated Planning and Other Legislation Amendment Act 2006* commencing. This amendment is necessary to remove any uncertainty regarding the status of a significant number of residential lots developed under the Act, under the Townsville planning scheme.

Clause 108 amends section 35(3) to clarify that any conditions in relation to the use of premises for land developed under the Act are taken to be conditions that attach to the land under *Integrated Planning Act 1997* as well as the *Local Government (Planning and Environment) Act 1990*.

Part 13 Vegetation Management Act 1999

Act amended in pt 13

Clause 109 states the part amends the *Vegetation Management Act 1999*.

Clause 110 amends the definition of "currency period" to reflect changes to "currency period" arrangements.

Part 14 Amendment of Wet Tropics World Heritage Protection and Management Act 1993

Act amended in pt 14

Clause 111 states the part amends the *Wet Tropics World Heritage Protection and Management Act 1993*.

Clause 112 amends section 14 to facilitate the inclusion of a seventh director on the Wet Tropics Management Authority (WTMA) Board of Directors. Subsection (a) is amended, and subsection (ab) included, clarifying that both the chairperson of the board and the additional Aboriginal member of the Board are both appointed by the Ministerial Council. Subsection (2) is introduced to clarify the additional Aboriginal person must be particularly concerned with the land in the wet tropics area.

Clause 113 deletes section 19 as the chairperson in now to be appointed under subsection 14(1)(a).

Clause 114 raises the quorum of the board from 3 to 4 to reflect its increased membership.

Schedule

Minor Amendments of the Integrated Planning Act 1997

The schedule contains minor consequential amendments and amendments of incorrect section references and other minor errors.