Planning Bill 2015

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Jackie Trad MP, Deputy Premier and Minister for Infrastructure, Local Government and Planning and Minister for Trade and Investment

Title of the Bill

Planning Bill 2015

Objectives of the Amendments

The objective of proposed amendments is to—

a) address a number of minor or technical drafting issues;

b) address a number of matters identified by the Department of Infrastructure, Local Government and Planning (the Department) as requiring further clarification of policy intent, or that improve the useability of the Planning Bill 2015 (the Bill);

c) address matters identified by the Department, to align with and give effect to the policy direction of government;

d) address recommendations of the Parliamentary Infrastructure, Planning and Natural Resources Committee (the Committee) in its Report No. 23 dated April 2016 (Committee Report) tabled in the Legislative Assembly on 8 April 2016; and

e) address issues raised in submissions made to the Committee during the Committee's consideration of the Bill.

Achievement of the Objectives

The amendments correct and update a number of legislative terms and cross-references contained in the Bill, for accuracy.

Clarification of several clauses is required to ensure the correct interpretation of the policy intent by users.

An amendment ensures that the Minister's guidelines and rules about making and amending planning schemes include rules for making a planning scheme change that reduces a material risk of serious harm to persons or property from natural events or hazards, and for which compensation for any reduction in the value of the affected premises is not payable by the local government.

Several submissions received by the Committee on the Bill requested that a longer public notification period apply to particular types of development applications. Under the Bill the standard public notification period is 15 business days. The Bill provides for a regulation to prescribe a notification period for applications for which a different notification period is appropriate, but does not state any minimum period. An amendment clarifies that the public notification period prescribed by the regulation must be more than 15 business days, thereby ensuring that a shorter period cannot apply.

Under the Bill, an assessment manager may approve a code assessable development application even if the development does not comply with some or all of the assessment benchmarks for the development. An amendment to this rule provides that an application may be approved even if the development does not comply with some of the assessment benchmarks. This addresses in part the Committee Report Point for clarification 1, in relation to concerns that an application may be approved even if the proposal does not comply with any of the assessment benchmarks, while enabling the assessment manager's decision to resolve conflict between one or more assessment benchmarks, as intended under the Bill. Other amendments further clarify what an assessment benchmark may be, and provide for the regulation to prescribe additional requirements for assessment benchmarks, and for the interaction of particular assessment benchmarks with other assessment benchmarks.

Amendments to address the recommendations from the Committee Report include the following:

Recommendation 7 – the effect of sections 68 and 70 of the *Queensland Heritage Act 1992* regarding the role of the Queensland Heritage Council with respect to decisions about the demolition or substantial demolition of a State heritage place, be retained. Amendment 110 requires the chief executive to refer relevant development applications to the Queensland Heritage Council and to have regard to the Council's advice, including whether there is no prudent or feasible alternative to carrying out the development, in deciding the application or giving a referral agency advice.

Recommendation 8 – requiring local governments and the chief executive to publish details about exemption certificates. Amendment 106 provides greater instruction for the regulation to prescribe the requirement for the entities to keep exemption certificates and a register of exemption certificates publicly available. In addition, Amendment 18 requires the person giving the exemption certificate to publish a notice on the person's website stating details of the development and why the exemption certificate has been given.

Recommendation 9 – address issues regarding transparency of decision-making and the liability for decision-making by chosen assessment managers. Amendment 19 requires local governments and the chief executive to apply a code of conduct to alternative assessment managers, including conflict of interest provisions applying when acting as the assessment manager. Amendments 19 and 20 also ensure that a person may be removed from the list for a breach of the code of conduct, and for the prescribed assessment manager to take over the role of

assessment manager if the person is removed from the list before a development application is decided.

Recommendation 11 – both State and non-State schools be exempt from paying infrastructure charges where the development is undertaken through designation. Amendment 75 amends clause 112 of the Bill to also ensure non-State schools developed under a designation are exempt from the payment of infrastructure charges.

Alternative Ways of Achieving Policy Objectives

There is no alternative way to achieve these objectives other than by amending the Bill.

Estimated Cost for Government Implementation

There are no additional anticipated costs for government arising from the amendments.

Consistency with Fundamental Legislative Principles

No breaches of fundamental legislative principles have been identified.

Consultation

Consultation versions of the Planning Bill package, consisting of the draft Planning Bill, the draft Planning and Environment Court Bill 2015, and the draft Planning (Consequential) and Other Legislation Amendment Bill 2015, were made publicly available by the Department from 10 September to 23October 2015, prior to their introduction in the Legislative Assembly on 12 November 2015. A large number of submissions were received by the Department, many very detailed, about the draft Bills, with the bulk of submissions relating to the draft Planning Bill 2015. Submissions were received from all sectors including Local Governments, Infrastructure providers, industry, environmental and heritage groups, community groups and individuals. While some of the issues raised in the submissions were addressed in the drafting of the Bill prior to introduction, a number of further amendments to be moved during consideration in detail address issues raised during this earlier consultation and to clarify the policy intent of the Bill.

A number of amendments result from the recommendations made in the Committee Report. Consultation occurred through the Committee's concurrent inquiry on the six Planning Bills, consisting of the government's three Bill package outlined above and the three Private Member's Planning Bills introduced in the Legislative Assembly on 4 June 2015. A total of 127 submissions were received on the six Bills. The Committee conducted public hearings on the six Planning Bills package on 27, 28 and 29 January 2016 in Cairns, Townsville and Mackay, and on 26 February 2016 in Brisbane.

NOTES ON PROVISIONS

Amendment 1 amends clause 2 (Commencement) by inserting a new provision to the effect that new clause 320A commences on assent, while the balance of the Bill commences on a day to be fixed by proclamation.

Amendment 2 amends clause 5 (Advancing purpose of Act) subclause (2)(a) to require that all decision-making processes under the Act be undertaken ethically. This amendment also addresses in part Recommendation 9 of the Committee Report about the accountability of actions and decisions made by chosen assessment managers.

Amendment 3 amends clause 17 (Minister's guidelines and rules) subclause (1)(b) by replacing the words "setting out the process for" with the word "about". It is likely the Minister's rules under clause 17 may, in addition to setting out processes for making local planning instruments, also include some requirements about the content of the instruments themselves. In particular, the rules may include requirements about the process for making local government infrastructure plans that also include requirements about aspects of their content. These requirements are different from the "required contents" under clause 16, as failure to comply with them would not invalidate the content of the instrument. Instead compliance with any requirements for the content of instruments under the Minister's rules would be achieved through the process for making the instrument. The word "about" in the amendment better reflects the potential scope of the Minister's rules than the current wording.

Amendment 4 amends clause 17 (Minister's guidelines and rules) subclause (1)(b) to ensure that the rules made by the Minister and prescribed by regulation must include the process for making a planning change for the purpose of reducing the risk of serious harm to persons or property due to natural hazards. If the planning change is made for this purpose in accordance with the rules, under clause 30(4)(e) the planning change is not an adverse planning change for which compensation may be payable by a local government. This amendment also clarifies that the process that must be followed in order that compensation not be payable is the process set out in the Minister's rules. A corresponding amendment is also made to clause 30(4)(e)(ii) to make this link clearer.

Amendment 5 amends clause 18 (Making or amending planning schemes) subclause (5)(b) to clarify that the period the planning instrument is to be kept available for inspection and purchase is to be known as the 'consultation period'.

Amendment 6 amends clause 18 (Making or amending planning schemes) subclause (5)(c) to clarify that submissions may be made to the local government within the consultation period mentioned in subclause (5)(b). Submissions must be received on or before the last day of the consultation period to be considered properly made submissions.

Amendment 7 amends clause 26 (Power of Minister to direct action be taken) subclause (1) to omit the reference to instruments. This corrects the terminology in relation to designations which are not 'instruments' under the Bill, but are a decision of a local government or the Minister.

Amendment 8 amends clause 26 (Power of Minister to direct action be taken) subclause (2) for consistency with the amendment to clause 26(1) above.

Amendment 9 amends clause 26 (Power of Minister to direct action be taken) subclause (2)(a) for consistency with the amendment to clause 26(1) above.

Amendment 10 amends clause 26 (Power of Minister to direct action be taken) subclause (5)(c) to clarify that the Minister's direction may be about any local planning instrument, not just a planning scheme, and omits paragraph (ii), as the Minister's notice of direction will not set out the process to be followed by the local government to make, amend or repeal a local planning instrument. The Minister's direction will require the local government to follow the process set out in the notice given to the local government by the chief executive, or in the Minister's rules.

Amendment 11 amends clause 29 (Request to apply superseded planning scheme) subclause (11) to correct legislative cross-references in the Bill.

Amendment 12 amends clause 30 (When this division applies) subclause (e)(ii), to clarify that a planning change to reduce a material risk of serious harm to persons or property due to natural hazards must be made under the Minister's rules, in order to not be an 'adverse planning change' for which compensation may be payable by a local government. Under the current wording it is not sufficiently clear that the rules mentioned in this provision are in fact the Minister's rules under clause 17. This amendment is also supported by Amendment 4, which requires that the Minister's rules include the process referred to in this amendment.

Amendment 13 amends clause 35 (What is a designation) subclause (2) to clarify that the requirements for the designation can include any or all of the matters listed in paragraphs (a) to (c). The current wording may suggest that a designation may only include one of the matters in paragraphs (a) – (c).

Amendment 14 amends clause 35 (What is a designation) subclause (2)(b)(iii) for consistency with changes made under Amendment 13.

Amendment 15 amends clause 43 (Categorising instruments) by inserting new subclause (1A) stating the matters that are not an assessment benchmark. The example provides guidance to users for what assessment benchmarks may be. This amendment seeks to address in part concerns expressed in submissions about the Bill, that assessment benchmarks are not sufficiently defined to prevent the intent of code assessment being frustrated through inclusion of benchmarks expressed broadly or indistinctly.

Assessment benchmarks are a broad concept covering all of the prescribed matters a development application may be assessed against. As such the term encompasses not only the concept of codes under the *Sustainable Planning Act 2009* (SPA), but all of the other prescribed matters against which an application may be assessed under either code assessment or impact assessment.

This is not to imply that the assessment benchmarks for code assessment are intended to be any less concise or objective than those for code assessment under SPA. The explanatory notes for the Bill state on page 48 that code assessment is "the assessment category for assessable development proposals that can be assessed against standard criteria or codes", implying a high degree of certainty about the outcomes sought through assessment benchmarks for code assessment.

The discussion about assessment benchmarks on pages 52 and 53 of the explanatory notes for the Bill envisages that assessment benchmarks may be expressed at different levels of specificity, and gives examples of different ways of expressing benchmarks related to amenity. However it should be noted that this discussion is about assessment benchmarks **generally**, and is **not** confined to assessment benchmarks for code assessment. In practice, it is anticipated that the expression of assessment benchmarks for code assessment will continue to be "fit for purpose" in relation to their scope and clarity, and will permit applicants and the community alike to form clear conclusions as to the outcomes intended for each benchmark.

Under SPA, "code" is not defined in an exclusive way. This reflects an intention not to arbitrarily limit the scope and construction of codes, given the very broad range of development and circumstances to which they may apply. Exclusively defining the term also risks unproductive challenges to decisions made under codes on the basis that the matter against which an application was assessed did not constitute a code. Likewise for these reasons it is not intended to exclusively define "benchmark" for the purpose of the Bill.

However it is possible to identify some matters which an assessment benchmark for code assessment should not be. These are:

- A matter of a person's opinion. The explanatory notes for the Bill, at page 52 establish that an assessment benchmark should be expressed objectively. A person's opinion is necessarily subjective, so is not appropriately expressed as an assessment benchmark. This is not to imply that **differences** of opinion may not arise about the appropriate way to express or apply a benchmark (under the example in the explanatory notes for the Bill, page 52, of objectively identifying and measuring relevant aspects of amenity for example), but rather that a benchmark **itself** cannot be expressed as a matter of opinion (for example "development that is, in the opinion of the assessment manager….");

- A person's circumstances, personal or otherwise. This is complimentary to clause 45(5)(b) of the Bill, which already prevents a person's personal circumstances being considered as an "other relevant matter" under impact assessment.

- For code assessment, a strategic outcome under a planning scheme. Strategic outcomes are expected to be expressed in broad terms which are inconsistent with the concise nature of assessment benchmarks for code assessment

- Another matter prescribed in a regulation.

Amendment 16 amends clause 43 (Categorising instruments) by replacing subclause (4)(c) clarifying that the effect of a local categorising instrument may not be inconsistent with the effect of an assessment benchmark identified in a regulation. This is intended to clarify the scope of this provision as well as its relationship with subclause (3), which also deals with the relationship between assessment benchmarks under a regulation and a local planning instrument.

Subclause (1)(c) provides that a categorising instrument '…sets out the matters (the ***assessment benchmarks***) that an assessment manager must assess assessable development against.'

Subclause (3) provides that a regulation made under subclause (1) applies instead of a local categorising instrument to the extent of any inconsistency. Because subclause (1) refers to the "setting out" of benchmarks in a categorising instrument, subclause (3) has effect only for any inconsistencies in the setting out, or expression of assessment benchmarks.

For example, if development complies with an assessment benchmark in a local categorising instrument only if the development is no higher than 10 storeys, but a benchmark in a regulation applying to the development states the development complies with the benchmark only if the development is no higher than 8 storeys, then there is a *prima face* conflict between the benchmarks - that is a conflict in their "setting out", and the benchmark in the regulation applies instead of the benchmark in the local categorising instrument.

However there may be assessment benchmarks which, while not inconsistent on their face, are inconsistent in their **effect** when applied in the development assessment process.

For example an assessment benchmark relating to koala protection, and an assessment benchmark relating to urban development may not *prima face* (i.e. in their "setting out") be in conflict, however a conflict may occur in the **application** of the two benchmarks to particular premises. Subclause (4)(c), together with subclause (5) is intended to deal with such conflicts in the effect of assessment benchmarks, as opposed to their setting out.

Subclause (4)(c) provides that an assessment benchmark under a regulation may "identify itself" as a benchmark to which this subclause applies. If an assessment benchmark is identified in this way, then the benchmark will prevail **in its effect** over the **effect** of any benchmark in a local categorising instrument. The requirement for an assessment benchmark with a prevailing effect to "identify itself" reflects the possibility that it may be intended that an assessment benchmark in a regulation **not** prevail over an assessment benchmark in a local categorising instrument, but instead that the two benchmarks be simply balanced against each other in development assessment.

Amendment 17 amends clause 45 (Categories of assessment) to insert a note after subclause (5) alerting users to matters the chief executive must have regard to in relation to a State heritage place under clause 276A. This amendment relates to Recommendation 7 of the Committee Report.

Amendment 18 amends clause 46 (Exemption certificate for some assessable development) to insert new subclauses (4A) and (4B). The amendment requires the person giving the exemption certificate to publish a notice on the person's website, stating details about the development on the premises for which the exemption certificate is given, and the reasons why the certificate has been given. This amendment relates to Recommendation 8 of the Committee Report.

Amendment 19 amends clause 48 (Who is the *assessment manager*) subclause (3) in relation to alternative assessment managers, to ensure that a person may be kept on the list kept by the local government or the chief executive (each *the entity*), only if the person has entered into an agreement with the entity requiring the person to comply with the entity's code of conduct, including provisions about conflict of interest. The agreement must also provide for the entity to remove the person from the entity's list if there is a breach of the code of conduct by the person. The person on the entity's list will become the assessment manager for a particular development application only if the person agrees to accept the development application, and the entity's list states the person is appropriately qualified to be an assessment manager for

that particular type of development. This amendment relates to Recommendation 9 of the Committee Report.

The amendment also seeks to clarify when a person on the entity's list becomes an assessment manager for the purposes of accepting, administering, assessing and deciding a development application. Under the Bill, the person becomes an assessment manager upon acceptance of a development application. However this meant that the relationship between the acceptance of a development application under this clause, and the acceptance of a development application under clause 51 was unclear. Under this amendment, the person becomes the assessment manager upon a written agreement with the person who proposes to make the development application. This clarifies that the rules for accepting a development application under clause 51 apply to the chosen assessment manager.

Amendment 20 amends clause 48 (Who is the *assessment manager*) by inserting new subclause (4A) clarifying that if the person on the entity's list is removed because of any noncompliance with the person's agreement with the entity, in particular the entity's code of conduct, the person stops being the assessment manager for any development applications, and the entity becomes the assessment manager instead. No extra fee is payable to the entity to be the assessment manager for the application. The provision provides for the point in the development assessment process from which the entity becomes the assessment manager, which must be at least 10 business days before the assessment manager is required to decide the application under the development assessment rules. This amendment relates to Recommendation 9 of the Committee Report.

Amendment 21 amends clause 49 (What is a *development approval*, *preliminary approval* or *development permit*) subclause (4)(b) to clarify that the owner referred to is the owner of the premises to which the later application for the development permit relates.

Amendment 22 amends clause 51 (Making development applications) subclause (2) to require that owner's consent to the making of a development application must be given in writing, rather than giving evidence of the owner's consent.

Amendment 23 amends clause 51 (Making development applications) to replace subclauses (4) and (5) to clarify that the assessment manager must be satisfied the application complies, or does not comply, with particular requirements before the requirement for the assessment manager to accept the application, or to not accept the application, applies. The amendment also clarifies that a development application may be accepted by the assessment manager without the required fee only if the required fee has been waived in full or in part under clause 108(b). An assessment manager must refuse to accept an application if it is not accompanied by the required fee, or the fee payable after applying any waiver under clause 108(b).

Amendment 24 amends clause 52 (Changing or withdrawing development applications) subclause (1) to ensure that any referral agency for an application is also given notice by the applicant of a change to, or withdrawal of, the application.

Amendment 25 amends clause 53 (Publicly notifying certain development applications) subclause (1) to clarify that notice of a development application is required to be given if **any part** of the application requires impact assessment or the application includes a variation request. The current wording of the Bill may imply that public notification is required if all of the development in the application requires impact assessment.

Amendment 26 amends clause 53 (Publicly notifying certain development applications) subclause (2) to reflect that under the development assessment rules, the notice may be required to be given in a number of ways, not just one way.

Amendment 27 amends clause 53 (Publicly notifying certain development applications) subclause (4) to omit the reference to 'public' notice. The amendment reflects the intent that notices required to be given under the development assessment rules include notices that are not 'public notices', for example, notices to adjoining owners. "Public notice" is a defined term in the dictionary, but refers only to notices given under chapter 2, not in relation to development applications.

Amendment 28 amends clause 53 (Publicly notifying certain development applications) subclause (4)(b)(ii) to ensure that the period for making submissions about particular development applications prescribed by regulation must be, at a minimum, more than 15 business days. This amendment ensures that public notification for these applications cannot be prescribed under the regulation to be a period less than the 15 business days usually required for applications. This amendment addresses submissions made to the Committee that the regulation could prescribe a period less than 15 business days.

Amendment 29 amends clause 53 (Publicly notifying certain development applications) by inserting new subclause (4A) which clarifies that the period for making submissions about the application does not start until the day after the day the last of the notices required under the development assessment rules is given. This avoids confusion in view of the fact that several notices are typically required to be given.

Amendment 30 amends clause 53 (Publicly notifying certain development applications) subclause (5) to clarify that an applicant or a referral agency may not make a submission about an application. This reflects the equivalent section 305(1) of the *Sustainable Planning Act 2009*. The amendment also inserts two notes alerting users that a submission must be a properly made submission to be afforded submitter appeal rights, and that an advice agency may tell the assessment manager to treat its referral agency response as a properly made submission.

Amendment 31 amends clause 53 (Publicly notifying certain development applications) by inserting new subclause (6A) which provides that if, within 1 year after a development application lapses or is withdrawn, a later development application is made that is not substantially different from the earlier application, any properly made submission about the lapsed or withdrawn application is taken to be a properly made submission for the later application. This provision continues the arrangements under the *Sustainable Planning Act 2009* applying to withdrawn applications, and expands the arrangements to ensure properly made submissions about lapsed or withdrawn applications are also taken to be properly made submissions for the later application.

Amendment 32 amends clause 53 (Publicly notifying certain development applications) by inserting new subclause (8A) which establishes the circumstances when public notification is not required for a development application which includes a variation request. This provision is substantially the same as the existing arrangement under the *Sustainable Planning Act 2009*, section 295(3).

An application for a preliminary approval may include a variation request, which, if approved effectively varies the operation of the planning scheme for the premises. As this is analogous

to an amendment of the planning scheme, clause 53(1)(b) of the Bill requires public notification of applications including variation requests.

However in some cases, progressive development of large premises may be undertaken by way of several sequential variation approvals, each of which is consistent with the framework established in the variation approval preceding it. The *Sustainable Planning Act 2009* provides that a later application for such an approval need not be publicly notified, provided it does not alter the substance of the preceding approval, or compromise a requirement for public notification contained in the earlier approval.

This amendment reflects the substance of the existing arrangements under the *Sustainable Planning Act 2009*. A later variation request need not be publicly notified, provided it does not –

- convert any development requiring impact assessment to another type of assessment, thereby removing public submission and appeal rights; and

- change development requiring code assessment to accepted development in a way that alters the form of development provided for under the assessment benchmarks for code assessment; and

- include assessment benchmarks that are substantially inconsistent with the benchmarks in the earlier variation approval.

Amendment 33 amends clause 54 (Copy of application to referral agency) subclause (1) to clarify that the required fee payable to the referral agency is subject to any waiver of the fee in full or part under clause 108(b), which may result in the fee payable being less than the required fee, or there being no fee.

Amendment 34 amends clause 54 (Copy of application to referral agency) to correct a legislative cross-reference. The amendment clarifies that if a person is an assessment manager for a development application, and would also be a referral agency, the person's functions and powers as assessment manager include those functions and powers the person has if the person were a referral agency for the application.

Amendment 35 amends clause 54 (Copy of application to referral agency) subclause (3)(b)for consistency with changes made under Amendment 33.

Amendment 36 amends clause 55 (Referral agency's assessment) subclause (1) to correct a legislative cross-reference to the requirements for the assessment of the application by a person that has been decided by the Minister to be a referral agency rather than the assessment manager.

Amendment 37 amends clause 55 (Referral agency's assessment) to insert a note after subclause (2) alerting users to matters the chief executive must have regard to in relation to a State heritage place under clause 276A. This amendment relates to Recommendation 7 of the Committee Report.

Amendment 38 amends clause 57 (Response before application) subclause (4) to clarify that the required fee payable to the referral agency is subject to any waiver of the fee in full or

part under clause 108(b), which may result in the fee payable being less than the required fee, or there being no fee.

Amendment 39 amends clause 59 (What this division is about) by replacing subclauses (2) and (3). The amendment clarifies that an assessment manager must continue to assess and decide an application under the development assessment process even if a referral agency directs the assessment manager to refuse an application.

Amendment 40 amends clause 60 (Deciding development applications) subclause (2) to clarify that the assessment manager's decision about a code assessable development application is subject to any referral agency's response for the application. Clause 62 requires the assessment manager to comply with any referral agency response. For example, the assessment manager must comply with a referral agency's response that directs the assessment manager to give any approval subject to stated development conditions, or to refuse the application.

Amendment 41 amends clause 60 (Deciding development applications) subclause (2)(b) and Example 2 to omit the references to 'or all'. The intent of this amendment is to provide that an application may be approved even if the development does not comply with *some of the assessment benchmarks*, instead of *some or all of the assessment benchmarks*. Enabling the application to be approved even if the application does not comply with some of the assessment benchmarks deals with the situation where conflicting benchmarks apply to the development and compliance with all of the benchmarks is not possible. This amendment relates to the Committee Report Point for clarification 1, about the Committee's concerns that an application may be approved even if it does not comply with any of the assessment benchmarks.

Amendment 42 amends clause 60 (Deciding development applications) subclause (2)(d) to insert an Example of a development condition for paragraph (d), to assist users in the interpretation of this provision. Clause 60(2)(d) effectively requires assessment managers undertaking code assessment to assess whether compliance with assessment benchmarks can be achieved through imposing relevant or reasonable conditions on any development approval. The note is intended to address perceptions that assessment managers may be obliged to find solutions for poorly conceptualised development applications, by clarifying that development conditions can address operational matters, or the way in which development may be carried out, but cannot have the effect of changing the type of development that was applied for.

Amendment 43 amends clause 60 (Deciding development applications) subclause (3) to clarify that the assessment manager's decision on an impact assessable development application is subject to any referral agency's response for the application. Clause 62 requires the assessment manager to comply with any referral agency response. For example, the assessment manager must comply with a referral agency's response that directs the assessment manager to give any approval subject to stated development conditions, or to refuse the application.

Amendment 44 amends clause 63 (Notice of decision) to correct misnumbered subclause (5).

Amendment 45 amends clause 63 (Notice of decision) subclause (7), corrected to subclause (5) above, to omit the references to 'or all' for consistency with the amendment to clause 60(2)(b).

Amendment 46 amends clause 64 (Deemed approval of applications) subclause (4) to correct legislative cross-references.

Amendment 47 amends clause 65 (Permitted development conditions) to insert a note drawing attention to the possibility that land surrender requirements under the Coastal Act may apply to some premises the subject of a development approval for reconfiguring a lot in a coastal management district under the coastal Act. The note also clarifies that a land surrender requirement is not a development condition.

Amendment 48 amends clause 66 (Prohibited development conditions) subclause (2)(c) to clarify that the owner is the owner of the premises at the time the later development application is made.

Amendment 49 amends clause 68 (Development assessment rules) subclause (1)(a) to provide that the development assessment rules made by the Minister must include provisions for how and when the re-notification of development applications is required when an application is changed and the change is other than a minor change. This amendment addresses the concerns raised in submissions to the Committee on the Bill, that particular applications may not be required to be re-notified if they are changed after the initial public notification period has been undertaken.

Amendment 50 amends clause 68 (Development assessment rules) subclause (2)(a) to clarify that the development assessment rules are to provide for a point in time when an application is taken to be properly made, rather than a period of time.

Amendment 51 amends clause 71 (When development approval has effect) subclause (2)(b) to provide that if there are submitters for an application, and all of the submitters notify the assessment manager that they will not be appealing the decision, the development approval will take effect the day after the last submitter gives the notice, rather than waiting for the last appeal period to end. If any of the submitters do not give the assessment manager notice they will not be appealing the decision, the development approval takes effect on the day after the last appeal period ends. The clause as drafted in the Bill mistakenly requires the last appeal period to end before the approval can take effect, even if all of the submitters notify the assessment manager that they will not be appealing the decision. This would unduly delay the date a development approval has effect under those circumstances.

Amendment 52 amends clause 71 (When development approval has effect) subclause (6) meaning of *submitter* to clarify that an advice agency must have told the assessment manager to treat it's response as a properly made submission to be afforded submitter appeal rights.

Amendment 53 amends clause 75 (Making change representations) to omit subclauses (4)(iii) and (iv) and inserts new subclause (4)(iii) imposing a time limit within which an assessment manager must respond to change representations, if the representations have been made after the applicant has suspended the applicant's appeal period under subclause (2).

The assessment manager must respond within 20 business days, or the longer period agreed between the applicant and the assessment manager. These arrangements were originally proposed to be included in the development assessment rules, however as there is very little other process associated with the giving of negotiated decision notices, the process has instead been included in the Bill.

The 20 day limit on the assessment manager's consideration of change representations has been imposed only in cases where the applicant has suspended the applicant's appeal period, and is intended to encourage a quick resolution of outstanding disagreements between the applicant and the assessment manager about conditions of a development approval. If the applicant has not suspended the applicant's appeal period, the appeal period itself acts as a *de-facto* time limit on the consideration of change representations, because if the assessment manager does not respond within the applicant's appeal period, it is anticipated that the applicant would appeal the assessment manager's decision.

If the applicant suspends the applicant's appeal period, and subsequently gives the assessment manager change representations, the applicant's appeal period is effectively suspended for a further 20 business days after the change representation are made (or longer period agreed between the applicant and the assessment manager).

However, the balance of the appeal period starts again if the applicant withdraws the notice suspending the appeal period or receives notice that the assessment manager does not agree with the change representations. The period for the suspension can be further extended at any time while the suspension is in effect if the assessment manager and the applicant agree, to give the assessment manager more time to consider the representations.

Amendment 54 amends clause 75 (Making change representations) by inserting new subclause (5) clarifying that if the assessment manager gives the applicant a negotiated decision notice before the applicant's appeal period ends, the applicant's appeal period starts again for another 20 business day period the day after the assessment manager gives the applicant the negotiated decision notice. This is different from any of the circumstances under subclause (4), under which the balance of the appeal period starts again from the point at which it was suspended, and reflects the fact that an applicant given a negotiated decision notice will need time to evaluate the contents of the notice before forming an opinion about whether the applicant wishes to appeal.

Amendment 55 amends clause 76 (Deciding change representations) subclause (2) to require that the assessment manager must give the decision notice about the change representations within 5 business days of making the decision. These arrangements were originally proposed to be included in the development assessment rules, however as there is very little other process associated with the giving of negotiated decision notices, the process has instead been included in the Bill. The 5 day period is consistent with the period for giving decision notices about other requests and applications under the Bill, and for applications under the development assessment rules.

Amendment 56 amends clause 78 (Making change application) subclause (3)(b)(iii) to clarify that the provision applies if there are one or more properly made submissions for the development application. The current wording may convey to the lay reader that it applies only to development approvals for which there was only one submission.

Amendment 57 amends clause 79 (Requirements for change applications) subclause (1)(b)(iii) to require that owner's consent to the making of the application must be given in writing, rather than giving evidence of the owner's consent. This is consistent with other amendments to owners' consent requirements intended to ensure greater transparency in the development assessment process.

Amendment 58 amends clause 79 (Requirements for change applications) subclause (2) to clarify that the responsible entity must be satisfied the application complies, or does not comply, with particular requirements before the requirement for the responsible entity to accept the application, or to not accept the application, applies. In particular, the provisions clarify the relationship between the ability to accept an application without the required fee, and the extent to which a fee can be reduced or waived under clause 108(b). This is consistent with other amendments intended to clarify the relationship between the ability to accept an application without the required fee, and the extent to which a fee may be waived under clause 108(b).

A change application may be accepted by the responsible entity without the required fee only if the required fee has been waived in full or in part under clause 108(b). The responsible entity must refuse to accept an application if it is not accompanied by the required fee, or the fee payable after applying any waiver under clause 108(b). This amendment is consistent with other proposed amendments relating to development applications, change applications and cancellation applications.

Amendment 59 amends clause 82 (Assessing and deciding application for other changes) subclause (2)(a)(ii) to correct an editorial error.

Amendment 60 amends clause 82 (Assessing and deciding application for other changes) subclause (3)(b)(ii) to correct a legislative cross-reference.

Amendment 61 amends clause 82 (Assessing and deciding application for other changes) subclause (4) to correct an editorial error.

Amendment 62 amends clause 82 (Assessing and deciding application for other changes) subclause (4)(d) to correct a legislative cross-reference.

Amendment 63 amends clause 83 (Notice of decision) subclause (1) to require that the responsible entity, other than the court, must give the decision notice about the change application within 5 business days after making the decision. This period is consistent with the period for giving decision notices about other requests and applications under the Bill. These arrangements were originally proposed to be included in the development assessment rules, however as there is very little other process associated with deciding change applications, the process has instead been included in the Bill.

Amendment 64 amends clause 84 (Cancellation applications) subclause (3)(a) to clarify that the application may be accepted by the assessment manager without the required fee only if the required fee has been waived in full or in part under clause 108(b). The assessment manager must refuse to accept an application if it is not accompanied by the required fee, or the fee payable after applying any waiver under clause 108(b). This amendment is consistent with other amendments intended to clarify the relationship between the ability to accept an application without the required fee, and the extent to which a fee may be waived under clause 108(b).

The amendment also amends subclause (3)(b) to require that the owner's consent to the making of the application must be given in writing, rather than giving evidence of the owner's consent. This is consistent with other amendments to owners' consent requirements intended to ensure greater transparency in the development assessment process.

Amendment 65 amends clause 84 (Cancellation applications) subclause (4)(b)(v) to correct an editorial error.

Amendment 66 amends clause 86 (Extension applications) subclause (2)(b)(ii) to require that the owner's consent to the making of the application must be given in writing, rather than giving evidence of the owner's consent. This is consistent with other amendments to owners' consent requirements intended to ensure greater transparency in the development assessment process.

Amendment 67 amends clause 86 (Extension applications) subclause (3) to clarify that the assessment manager must be satisfied the application complies, or does not comply, with particular requirements before the requirement for the assessment manager to accept the application, or to not accept the application, applies. The application may be accepted by the assessment manager without the required fee only if the required fee has been waived in full or in part under clause 108(b). The assessment manager must refuse to accept an application if it is not accompanied by the required fee, or the fee payable after applying any waiver under clause 108(b). This amendment is consistent with other amendments intended to clarify the relationship between the ability to accept an application without the required fee, and the extent to which a fee may be waived under clause 108(b).

Amendment 68 amends clause 89 (Particular approvals to be noted) subclause 1(a) to provide that development approvals given by assessment managers other than the local government must also be noted on the planning scheme, if the local government considers the approval is substantially inconsistent with the planning scheme. This provision previously applied only to development approvals given by local governments, but did not for example include approvals given by other assessment managers, or the Minister under a call-in.

Amendment 69 amends clause 94 (Directions to decision-makers—future applications) to replace subclause (2) to clarify that the Minister must give a copy of the Minister's direction by gazette notice to the decision-maker, as well as the other persons listed.

Amendment 70 amends clause 95 (Directions to decision-makers—current applications) to insert new subclause (3)(aa) to clarify that the Minister must give a copy of the Minister's direction by gazette notice to the decision-maker.

Amendment 71 inserts new clause 95A (Directions about alternative assessment managers) providing for the Minister, by gazette notice, to direct a local government or the chief executive (each *the entity*) not to keep a list of persons appropriately qualified to be alternative assessment managers for development applications of a particular type, or to remove a person from a list that the entity keeps. The Minister must give a copy of the direction to the entity and to any person removed from the list under the direction. This amendment relates to Recommendation 9 of the Committee Report.

Amendment 72 amends clause 101 (Seeking representations about proposed call in) subclause (6) to correct an editorial error.

Amendment 73 amends clause 104 (Deciding called in application) subclause (4)(d) to correct a legislative cross-reference.

Amendment 74 amends clause 104 (Deciding called in application) subclause (8) to correct a legislative cross-reference.

Amendment 75 amends clause 112 (Adopting charges by resolution) subclause (3)(c) and inserts new subclause (3)(d), to provide that an adopted charge does not apply to development for a non-State school under a designation. This amendment relates to Recommendation 11 of the Committee Report.

Amendment 76 amends clause 112 (Adopting charges by resolution) by inserting new subclause (6A) to provide for a definition of *non-State school* for this clause.

Amendment 77 amends clause 126 (Application and operation of subdivision) subclause (2), Note, to correct a legislative cross-reference.

Amendment 78 amends clause 128 (Offset or refund requirements) by moving the example under subclause (3) in the Bill to after the Note under subclause (2). The example relates to circumstances identified under subsection (2), not subsection (3).

Amendment 79 amends clause 128 (Offset or refund requirements) by omitting the Example after subclause (3), which has moved to after the Note under subclause (2). This relates to amendment 78.

Amendment 80 amends clause 160 (What part is about) to clarify that the development offences under this part are also subject to chapter 7, part 1. This clarifies that existing lawful uses, works and approvals, and implied and uncommenced use rights are not captured by the development offence provisions.

Amendment 81 amends clause 173 (Proceedings for offences) subclause (1)(b)(ii) to omit the limitation on proceedings being started more than 2 years after the offence is committed. This limitation does not apply under the *Sustainable Planning Act 2009* and significantly limits the enforcement mechanism in cases where the date of the offence cannot be established, or the complainant is not aware of the offence within the first 2 years.

Amendment 82 amends clause 175 (Enforcement orders) to insert new subclause (2A) requiring an enforcement order to state the period within which the defendant must comply with the order. This new subclause is consistent with clause 179(7).

Amendment 83 amends clause 175 (Enforcement orders) subclauses (5) to (9) to clarify arrangements for enforcement orders and ensure consistency with clause 179. The amendments provide that an enforcement order is only required to be recorded on title if it attaches to the premises. The amendments also impose a 10 business day timeframe for giving notice to the registrar of titles about the enforcement order and cover the scenario where it might not be the original defendant applying to the court for a compliance order or asking the registrar of titles to remove the record.

Amendment 84 amends clause 179 (Enforcement orders) subclauses (9) to (13) to clarify arrangements for enforcement orders and ensure consistency with clause 175. The amendments provide that an enforcement order is only required to be recorded on title if it attaches to the premises. The amendments also impose a 10 business day timeframe for giving notice to the registrar of titles about the enforcement order and cover the scenario where it might not be the original respondent applying to the court for a compliance order or asking the registrar of titles to remove the record.

Amendment 85 amends clause 228 (Appeals to tribunal or P&E Court) to omit "decision", as the notice referred to in clause 269(3)(a) or (4) is not a decision notice.

Amendment 86 amends clause 228 (Appeals to tribunal or P&E Court) to replace subclause (3)(e) with a provision to ensure an appeal period is provided for appeals about a deemed approval where no decision notice is given. Replaced subclause (3)(e) is restated as subclause (3)(f) and provides that for any appeal not mentioned earlier in subclause (3), the appeal period is 20 business days after the notice of the decision, including an enforcement notice, is given to the person.

Amendment 87 amends clause 229 (Notice of appeal) subclause (3)(c) and inserts new subclause (3)(ca) to clarify service requirements for an appeal about a change application under Schedule 1 table 1 item 2.

Amendment 88 amends clause 229 (Notice of appeal) subclause (3)(d) to reflect the insertion of subclause (3)(ca).

Amendment 89 amends clause 230 (Other appeals) subclause (4), in the definition of *non-appealable*, to include reference to "decision or matter", for consistency with the terminology in subclauses (1) to (3).

Amendment 90 amends clause 239 (Application for declaration about making of development application) subclause (2) for consistency with other amendments to the Bill requiring the written consent of the owner of the premises for a development application, rather than the evidence of the consent of the owner.

Amendment 91 amends clause 239 (Application for declaration about making of development application) by omitting subclause (5), which is superfluous as this requirement is duplicated in clause 254(1), and renumbering subclause (6) as subclause (5).

Amendment 92 amends clause 240 (Application for declaration about change to development approval) by omitting subclause (4), which is superfluous as this requirement is duplicated in clause 254(1), and renumbering subclause (5) as subclause (4).

Amendment 93 amends clause 243 (Ending tribunal proceedings or establishing new tribunal) subclause (2) to clarify that another tribunal may be established to hear or re-hear a proceeding and that the chief executive must give notice about the establishment of the new tribunal to each party.

Amendment 94 amends clause 243 (Ending tribunal proceedings or establishing new tribunal) subclause (3) to clarify that the proceedings may be ended if it is not reasonably practicable for another tribunal to hear or re-hear the proceeding.

Amendment 95 amends clause 243 (Ending tribunal proceedings or establishing new tribunal) subclause (4) to correct the legislative cross-references.

Amendment 96 amends clause 243 (Ending tribunal proceedings or establishing new tribunal) subclause (5) to clarify the recourse available if, under this clause, the chief executive decides not to establish a tribunal or to end proceedings. Amended subclause (5) provides that any period for starting proceedings in the Planning and Environment Court, for the matter the subject of the tribunal proceedings, starts again when the chief executive gives the decision

notice to the party who started the proceedings. The amendment also inserts new subclause (6) requiring the decision notice to state the effect of subclause (5).

Amendment 97 amends clause 250 (Matters tribunal may consider) by omitting subclause (2), and inserting new subclauses (2) and (3), to ensure the provision clarifies the applicable laws for all tribunal proceedings mentioned in subclause (1).

Amendment 98 amends clause 251 (Deciding no jurisdiction for tribunal proceedings) subclause (3) to clarify the recourse available if, under this clause, the tribunal decides it has no jurisdiction for the proceedings. Amended subclause (3) provides that any period for starting proceedings in the Planning and Environment Court, for the matter the subject of the tribunal proceedings, starts again when the tribunal gives the decision notice to the party who started the proceedings. The amendment also inserts a new subclause requiring the decision notice to state the effect of subclause (3), and renumbers previous subclause (4) as subclause (5).

Amendment 99 amends clause 252 (Conduct of appeals) subclause (2) to clarify that, generally, the appellant must establish the appeal should be upheld. The word 'generally' is used because there is an exception in subclause (3).

Amendment 100 amends clause 252 (Conduct of appeals) subclause (3) to clarify that subclauses (2) and (3) are alternatives.

Amendment 101 amends clause 253 (Deciding appeals to tribunal) by inserting new subclause (5) in relation to when the tribunal's decision has effect. This subclause was previously located in clause 254(2).

Amendment 102 amends clause 254 (Notice of tribunal's decision) by omitting subclause (2), which has been relocated to clause 253(5), and clarifying that a tribunal must give a decision notice about a decision for tribunal proceedings, other than for any directions or interim orders given by the tribunal.

Amendment 103 amends clause 260 (Implied and uncommenced right to use) subclause (1)(c) to clarify that a use implied by a development approval that was accepted development at the time the development application was made, and had not started when a planning instrument change is made, is taken to be a lawful use immediately before the planning instrument change if the use is prohibited development after the change.

Amendment 104 amends clause 261 (Prospective categorising regulations unaffected) to correct a legislative cross-reference.

Amendment 105 amends clause 262 (Taking or purchasing land for planning purposes) to insert a Note under subclause (3) referring users to the relevant parts of the Acquisition Act for the taking of land under that Act and compensation arrangements for the land taken. The amendment clarifies a matter considered by the Committee about the meaning of the term "taken" used in this clause. The relevant part of the Acquisition Act to which the note is directed explains the procedures for taking land under that Act, including the payment of compensation for taking land, and appeal rights in relation to compensation.

Amendment 106 amends clause 263 (Public access to documents) to insert new subclause (1A) providing that the regulation must require a person that gives an exemption certificate to

keep copies of each certificate and a register of exemption certificates given, available to the public for inspection and purchase. This amendment relates to Recommendation 8 of the Committee Report.

Amendment 107 amends clause 263 (Public access to documents) subclause (5) to clarify that the regulation must prescribe when a requirement to make particular documents or information publicly available because it contains information of a purely private nature about an individual, or contains sensitive security information, does not apply.

Amendment 108 omits clause 265 (Application of Information Privacy Act 2009). This clause provides that under the *Information Privacy Act 2009*, the right of access to or amendment of personal information in relation to information kept under the Bill applies to corporations as well as individuals. However, as the definition of an 'individual' under the *Acts Interpretation Act 1954* means a natural person, it is not possible for personal information to be kept for a corporation, for the purposes of the *Information Privacy Act 2009*. Therefore, this clause is redundant and is omitted.

Amendment 109 amends clause 276 (Party houses) subclause (5)(a) to correct an editorial error.

Amendment 110 inserts new clause 276A (Assessment and decision rules for particular State heritage places) requiring the chief executive as an assessment manager, referral agency or a responsible entity, to refer development applications and change applications involving a State heritage place to the Queensland Heritage Council, if the chief executive is satisfied the cultural heritage significance of the place will be destroyed or substantially reduced by the proposed development. The chief executive must have regard to the advice of the Queensland Heritage Council, and have regard to whether there is a prudent or feasible alternative to carrying out the proposed development, before deciding the application or giving the referral agency response. The provision also clarifies when an alternative is not a prudent or feasible alternative. This amendment relates to Recommendation 7 of the Committee Report.

Amendment 111 amends clause 286 (Statutory instruments) to insert new subclause (2A) which provides that a statutory instrument in the process of being made under the old Act upon commencement may, when made, include matters or amendments that the Minister is satisfied are consistent with the Planning Act, provided the Minister is also satisfied the changes do not substantially change the effect of the instrument.

The Acts Interpretation Act 1954, section 17, provides for powers and functions under Acts to be exercised between their enactment and commencement of the Act, with the effect of the exercise to come into effect upon commencement. Consequently this provision will enable non-substantive changes to be made for consistency with the Bill to proposed statutory instruments in the process of being made upon commencement, in readiness for the commencement of the Planning Act.

Amendment 112 amends clause 287 (Applications generally) subclause (5) and (6) to clarify that the provision relates to 'a document' resulting from the application, for example a decision notice, rather than 'an instrument', which would limit the intent of the provision.

Amendment 113 amends clause 287 (Applications generally) subclauses (5)(b) and (6) to clarify that the provision relates to the 'document' resulting from the application, for example a decision notice, rather than the 'instrument', which would limit the intent of the provision.

Amendment 114 inserts new clause 291A (Rules about amending local planning instrument consistent with Act) which enables the Minister to make rules about making amendments to local planning instruments if the amendments are consistent with the Planning Act and do not substantially change the effect of the instrument.

The rules may be made without complying with clause 17(2) and (3) of the Bill. This means that the process for making the rules is not required to be the same as for making a State planning policy (including lengthy community consultation) as is required for example for the Minister's rules and guidelines under section 17. However this does not preclude other forms of consultation about the proposed rules.

Also, subclause (3) provides that the rules come into effect upon publication of a gazette notice about their making, rather than having to be prescribed under a regulation.

The amendment also inserts new clause 291B (Amending State planning instrument consistent with Act) which enables the Minister to make an amendment to a State planning instrument using the process under clause 11 as if the amendment were a minor amendment, provided the Minister is satisfied the amendment is consistent with the Bill and does not change the substance of the instrument.

The Acts Interpretation Act 1954, section 17, provides for powers and functions under Acts to be exercised between their enactment and commencement of the Act, with the effect of the exercise to come into effect upon commencement. Consequently clauses 291A and 291B will enable non-substantive changes to be made for consistency with the Bill to existing statutory instruments, in readiness for the commencement of the Planning Act.

Amendment 115 amends clause 309 (Particular proceedings) subclause (1) table, column 2, to correct a legislative cross-reference to the old Act.

Amendment 116 amends clause 309 (Particular proceedings) subclause (3) to correct a legislative cross-reference to the P&E Court Act.

Amendment 117 amends clause 315 (Rezoning approval agreements) subclause (4) meaning of *rezoning approval* paragraph (c) to correct the reference to the repealed *Integrated Planning Act 2009*, rather than the LG(P&E) Act.

Amendment 118 inserts new clause 320A (Amendment to renumber), providing that upon commencement the provisions of this Act are renumbered in the same way they may be renumbered under the *Reprints Act 1992*, section 43. The amendment is intended to facilitate the efficient renumbering of provisions in this Act on assent, and in other Acts referring to provisions in the Planning Act, including the Planning (Consequential) and Other Legislation Amendment Act, without the need for considering a very large number of renumbering amendments by way of amendments moved during consideration in detail of the relevant Bills.

Amendment 119 amends schedule 1 (Appeals) item 1(2)(f) to remove the words "a minor change to". This ensures any change application that meets the jurisdictional requirements for the tribunal may be heard by the tribunal.

Amendment 120 amends schedule 1 (Appeals) item 1(2)(g)(ii) to correct an editorial error.

Amendment 121 amends schedule 1 (Appeals) table 1, item 2, column 4, to ensure that if properly made submissions were made about a change application or there was an eligible advice agency for the change application, eligible submitters and eligible advice agencies may elect to be a co-respondent.

Amendment 122 amends schedule 1 (Appeals) to clarify that the appeal right in table 2 item 1 does not apply to a decision under clause 251, in which a tribunal decides that it has no jurisdiction for a matter. The recourse available for a decision under clause 251 is set out in that clause.

Amendment 123 amends schedule 2 (Dictionary) definition for *decision notice*, paragraph (b), to clarify that the reasons for the decision must be stated in the decision notice if the decision is to refuse the application or request, the decision is made by a tribunal, or the decision is made by the chief executive under clause 243(1) or (3) to not establish a tribunal or to end tribunal proceedings. This reflects the scope of decisions under the *Sustainable Planning Act 2009* for which the decision notice must include reasons.

Amendment 124 amends schedule 2 (Dictionary) definition for *minor change*, paragraph (a)(ii), to clarify the meaning of a minor change in relation to a development application. The Bill currently refers to a change application on the second line of the definition, whereas the reference should be to the change.

Amendment 125 amends schedule 2 (Dictionary) definition for *minor change*, paragraph (b) to correct an editorial error.

Amendment 126 amends schedule 2 (Dictionary) definition for *public notice*, paragraph (b) to correct an editorial error.

Amendment 127 amends schedule 2 (Dictionary) by inserting a definition for *State heritage place*, consistent with the insertion of the new clause 276A under Amendment 110.