

Planning (Consequential) and Other Legislation Amendment 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 (Consequential) and Other Legislation Amendment 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 (Consequential) and Other Legislation Amendment Bill 2015 (the Bill);
- c) address matters identified by the Department, including 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;
- 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 legislative terms and cross-references contained in the Bill, for accuracy and clarity. Clarification of several clauses is required to ensure the correct interpretation of the policy intent by users.

Amendments relating to recommendations from the Committee Report include:

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 28 provides for an amendment to the *Queensland Heritage Act 1992*, to include, as a function of the Queensland Heritage Council, the giving of advice to the planning chief executive about a development application. The amendment also includes a note alerting users to the amendment proposed to the Planning Bill, which requires the planning chief executive to seek the advice of the Queensland Heritage Council.

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 23 October 2015, prior to their introduction in the Legislative Assembly on 12 November 2015. A large number of submissions were received, 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.

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 19 to replace subclause (3)(iv) of section 53 of the *Airport Assets (Restructuring and Disposal) Act 2008*, to clarify the provision.

Amendment 2 amends clause 21 which replaces section 55 of the *Airport Assets (Restructuring and Disposal) Act 2008*, to clarify the provision.

Amendment 3 amends clause 27 which inserts transitional provisions for this Bill in new chapter 7 in the *Airport Assets (Restructuring and Disposal) Act 2008*, to amend the heading of proposed new section 109 and clarify the provision.

Amendment 4 amends clause 27 which inserts transitional provisions for this Bill in new chapter 7 of the *Airport Assets (Restructuring and Disposal) Act 2008*, to amend the heading of proposed new section 111 for consistency with the intent of the provision.

Amendment 5 amends clause 42 which amends section 16 of the *Building Act 1975* to correct an editorial error.

Amendment 6 amends clause 75 which amends replaced section 83(1)(d) of the *Building Act 1975* to correct an editorial error.

Amendment 7 amends clause 75 which amends replaced section 83(3) of the *Building Act 1975* to clarify the provision.

Amendment 8 amends clause 113 which amends schedule 2 of the *Building Act 1975*, definition of *properly made application*, to update a legislative cross-reference as a result of amendments proposed to clause 79 of the Planning Bill.

Amendment 9 amends clause 131 which inserts transitional provisions under new chapter 8 part 7 of the *City of Brisbane Act 2010* to clarify the reference in proposed section 274(1) is to ‘former’ section 173A as unamended by this Bill.

Amendment 10 amends clause 131 to clarify the reference in proposed section 274(2) for the application of former section 173A.

Amendment 11 amends clause 145 which amends the *Coastal Protection and Management Act 1995* by replacing chapter 2 part 6 division 3 subdivision 2 about land surrender requirements. Proposed replacement section 111(4) is amended to omit the words “to the owner” as the timeframes for giving the notice under this section are intended to apply to all recipients of the proposed surrender notice, not just the owner.

Amendment 12 inserts a new clause 169A. The new clause amends section 40C (Declaration of PDA-associated development) of the *Economic Development Act 2012*, which was inserted by the *Queen’s Wharf Act 2016*, to update legislative terms cross-references in the proposed Planning Act.

Amendment 13 amends clause 173 by adding reference to “change applications” in the proposed new heading for section 44 of the *Economic Development Act 2012*, given that the amendments to section 44 in clause 173 address change applications as well as development applications.

Amendment 14 amends clause 173 which amends section 44 of the *Economic Development Act 2012*, so that the section also applies if a change application proposes to change an application to include land in a priority development area.

Amendment 15 amends clause 178 to reflect an amendment to section 50 of the *Economic Development Act 2012* made by the *Queen's Wharf Act 2016*.

Amendment 16 inserts a new clause 179A to update references to the proposed Planning Act in section 51A of the *Economic Development Act 2012*.

Amendment 17 amends clause 182 to update a legislative reference to the proposed Planning Act in section 77 of the *Economic Development Act 2012*.

Amendment 18 amends clause 186 to update legislative references to the proposed Planning Act in section 87 of the *Economic Development Act 2012* made by the *Queen's Wharf Act 2016*.

Amendment 19 amends clause 189 to ensure the currency periods for PDA development approvals under section 100 of the *Economic Development Act 2012* are consistent with currency periods for development approvals under the Planning Bill. The amendment omits provisions about 'related approvals' which are not continued under the Planning Bill.

Amendment 20 amends clause 190 to ensure the meaning of *plan of subdivision* in section 104 of the *Economic Development Act 2012* is consistent with terminology under the Planning Bill and regulation.

Amendment 21 omits clause 195 because this amendment to the *Economic Development Act 2012* was made by the *Queen's Wharf Act 2016*.

Amendment 22 amends clause 200 which amends the *Economic Development Act 2012* to update the section numbers for transitional provisions under chapter 7 part 2, due to the insertion of provisions by the *Queen's Wharf Act 2016*. The amendment inserts two new transitional provision, proposed section 222, which clarifies that former section 87(2A) continues to apply to applications for PDA-associated development made but not decided before the commencement, and proposed section 224, which clarifies that the currency periods as amended under section 100 do not apply to PDA development approvals given before the commencement.

Amendment 23 amends clause 203 which amends section 112A(2)(b) of the *Electricity Act 1994* to clarify the reference to premises that are the subject of a designation under the proposed Planning Act.

Amendment 24 inserts new Part 25A, which amends the *Housing Act 2003*, and inserts new clause 265A which amends section 94F of the *Housing Act 2003*, to update definitions for terms used in the Planning Bill, and to insert a definition for *relevant public housing*, as the defined term for *public housing* in the *Sustainable Planning Act 1997* is not continued in the Planning Bill.

Amendment 25 amends clause 314 which inserts transitional provisions under new chapter 9 part 9 of the *Local Government Act 2009* to clarify the reference in proposed section 311(1) is to 'former' section 171A as unamended by this Bill.

Amendment 26 amends clause 314 to clarify the reference in proposed section 311(2) for the application of former section 171A.

Amendment 27 amends clause 374 which inserts transitional provisions under new schedule 1 part 12 of the *Queensland Building and Construction Commission Act 1999*, to update numbering for the part and the transitional provisions, required because of the transitional provision inserted under the *Plumbing and Drainage and Other Legislation Amendment Act 2016*.

Amendment 28 inserts new clause 377A which amends section 8 of the *Queensland Heritage Act 1992* to include the giving of advice to the planning chief executive about a development application as a function of the Queensland Heritage Council. The amendment also includes a note alerting users to the Planning Bill section 276A, which requires the planning chief executive to seek the advice of the Queensland Heritage Council. This relates to recommendation 7 of the Committee Report.

Amendment 29 amends clause 386 which amends section 121 of the *Queensland Heritage Act 1992*, to omit the definition of *planning chief executive* which is moved to the schedule (Dictionary).

Amendment 30 amends clause 396 which amends the schedule to the *Queensland Heritage Act*, to insert a definition for *development application*.

Amendment 31 amends clause 396 which amends the schedule to the *Queensland Heritage Act*, to insert a definition for *planning chief executive*.

Amendment 32 amends clause 411 which amends section 79 of the *Queensland Reconstruction Authority Act 2011*, to clarify the provision.

Amendment 33 amends clause 411 which amends section 79 of the *Queensland Reconstruction Authority Act 2011*, to clarify the provision.

Amendment 34 amends clause 417 which replaces part 6 division 4 subdivision 6 of the *Queensland Reconstruction Authority Act 2011*, to clarify the provision.

Amendment 35 amends clause 423 which amends the definition of *community infrastructure* in the schedule to the *Queensland Reconstruction Authority Act 2011*, to replace “and” with “or”.

Amendment 36 amends clause 466 which amends section 99BRBF of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* to update a reference to the “development tribunal”, and for consistency with the equivalent appeal right under the Planning Bill.

Amendment 37 inserts new clause 472A which amends section 99BRBO of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, for consistency with the equivalent appeal right under the Planning Bill.

Amendment 38 amends clause 480 which amends section 99BRCG of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, to clarify the provision.

Amendment 39 amends clause 480 which amends section 99BRBO of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, meaning of *maximum adopted charge* to reflect the provision under the Planning Bill for the maximum adopted charge to be automatically indexed each financial year.

Amendment 40 amends clause 480 which amends section 99BRBO of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, to clarify the provision.

Amendment 41 amends clause 499 which inserts transitional provisions under new chapter 6 part 11 of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, to update a legislative reference to the Planning Bill in the definition for *water connection aspect*, paragraph (a)(ii).

Amendment 42 amends clause 499 which inserts transitional provisions under new chapter 6 part 11 of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, to correct a cross-referencing error in proposed transitional clause 143(6), by replacing reference to “part 3” with “part 4”.

Amendment 43 amends clause 499 which inserts transitional provisions under new chapter 6 part 11 of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, to replace references to “local government” with “distributor-retailer” in proposed transitional clause 146.

Amendment 44 amends clause 499 which inserts transitional provisions under new chapter 6 part 11 of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, to clarify the heading for proposed transitional clause 147.

Amendment 45 amends clause 499 which inserts transitional provisions under new chapter 6 part 11 of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, to clarify proposed transitional clause 147.

Amendment 46 amends clause 540 which amends inserted section 85(5) of the *State Development and Public Works Organisation Act 1971*, to update the reference to a designation made under the proposed Planning Act.

Amendment 47 inserts new Part 60A, which amends the *Sustainable Ports Development Act 2015*.

- New clause 555A provides that the part amends the *Sustainable Ports Development Act 2015*.
- New clause 555B amends section 21 (Content of port overlay) to update legislative terms to reflect the Planning Bill.
- New clause 555C amends section 30 (Application of Planning Act) to update legislative terms and references to reflect the Planning Bill and so that it applies to change applications under the Planning Bill.
- New clause 555D amends section 34 (Particular applications for port facilities must be refused) so that it applies to change applications, other than minor change applications.

- New clause 555E amends section 42 (Existing development applications) to change the heading to “Existing development application or change application” and amends the provision so that it also applies to change applications.
- New clause 555F amends the part 5 (Transitional provision) heading to “Transitional provisions” and inserts a heading “Division 1” applying to the current provisions, to allow for the insertion of new transitional provisions for this Bill under Division 2.
- New clause 555G inserts new transitional provision clause 50 (Existing development applications) under new Division 2, for particular development applications made before the commencement.
- New clause 555H amends schedule 1 (Dictionary) to update legislative terms and references to reflect the Planning Bill and to include reference to change applications in the *approval* and *approving authority* definitions.

Amendment 48 inserts new clauses after clause 563, which amends the *Transport Infrastructure Act 1994*.

- New clause 563A inserts new clause 62A (Particular applications taken to be application for decision under s 62(1), which provides that a development application or change application involving access between the land and a State-controlled road, for which the planning chief executive is the assessment manager, referral agency or the responsible entity, is taken to also be an application for a decision under section 62(1) of the *Transport Infrastructure Act 1994*.
- New clause 563B changes the heading and replaces section 63 (Request for information), providing for the chief executive to require the further information needed to decide an application to be given by the applicant by a stated day. This ensures the decision can be made by the chief executive in a timely period.
- New clause 563C amends section 64 to clarify the provision.
- New clause 563D amends section 67—
 - Subclause (1) clarifies that if a planning application is taken to be an application for a decision under section 62(1), the notice of the decision must be given to the planning chief executive rather than the owner and any occupier of the land and the applicant.
 - Subclause (2) clarifies that either the applicant for the planning application, or the owner and occupier of the land or applicant for the section 62(1) decision, is bound by the decision because of section 70.
 - Subclause (3) renumbers sections sequentially.
 - Subclause (4) inserts new subsections (3) to (9) which clarify that an information notice for the decision must be given by the chief executive if the decision is not the decision sought, including for an application taken to be an application under clause 62A(2). The provisions provide for when the notice of the decision relating to a planning application must be given by the chief

executive to the planning chief executive, and when the planning chief executive must give the notice to the applicant for the planning application. The provisions also clarify that the decision under section 62(1) takes effect only when the relevant planning approval has effect, and stops having effect if the planning approval lapses or is cancelled. If the planning application is refused, any decision under section 62(1) does not take effect.

- New clause 563E inserts new clause 67A which reflects the current arrangements under section 67(3) and (4) proposed to be omitted under new clause 563D, about requests for a copy of any decision in force under section 62(1).

Amendment 49 amends clause 564 by inserting new subsection 74(5A) in the *Transport Infrastructure Act 1994*, clarifying when compensation is not payable by the chief executive if the section 62(1) decision is made in relation to a planning application. The amendment also updates a legislative reference to the Planning Bill.

Amendment 50 amends clause 565 to amend section 75 of the *Transport Infrastructure Act 1994*, by changing the heading to ‘Conditions in particular development approvals’, and amending paragraph (a) to clarify that development approvals mentioned are those given under the repealed *Sustainable Planning Act 2009* or the repealed *Integrated Planning Act 1997*. Paragraph (b) is replaced by a new paragraph to reflect the chief executive’s role under the repealed Acts as a referral agency prior to the transference of this role to the planning chief executive on 1 July 2013.

Amendment 51 amends clause 572 to update the definition for *designation* in section 283I of the *Transport Infrastructure Act 1994* for consistency with amendments proposed to the Planning Bill which replace the term *infrastructure designation* with *designation*.

Amendment 52 amends clause 572 subclause (2) to omit the definition for *infrastructure designation* in section 283I of the *Transport Infrastructure Act 1994* for consistency with amendments proposed to the Planning Bill which replace the term *infrastructure designation* with *designation*.

Amendment 53 amends clause 572 to correct legislative terms in section 283I of the *Transport Infrastructure Act 1994* for consistency with the Planning Bill.

Amendment 54 amends clause 575 to correct an editorial error in the clause heading.

Amendment 55 amends clause 586 by amending replaced clause 283ZZB(3)(b)(iv) of the *Transport Infrastructure Act 1994*, to clarify the provision.

Amendment 56 amends clause 586 by amending replaced clause 283ZZC(2) of the *Transport Infrastructure Act 1994*, for consistency with the definition for *designation* under proposed amended section 283I, consistent with amendments proposed to the Planning Bill which replace the term *infrastructure designation* with *designation*.

Amendment 57 amends clause 597 which amends section 477AA of the *Transport Infrastructure Act 1994*, to clarify the provision.

Amendment 58 inserts new clause 597A which amends section 485B of the *Transport Infrastructure Act 1994*, by inserting new subsections providing that if any appeal is made

against a decision on a planning application that is taken to be an application for a decision under section 62(1), and a person also appeals to the court against the decision on the planning application, the court may order the two appeals be heard together or that one of the appeals be stayed until the other has been decided. The amendment also renumbers the sections sequentially.

Amendment 59 amends clause 599 which inserts transitional provisions in new chapter 21 part 5 of the *Transport Infrastructure Act 1994*, to amend inserted transitional clause 584(1) to correct an editorial error.

Amendment 60 amends clause 600(1) which amends Schedule 6 of the *Transport Infrastructure Act 1994*, to insert a reference to *development*.

Amendment 61 amends clause 600(1) which amends Schedule 6 of the *Transport Infrastructure Act 1994*, to insert a reference to *referral agency*.

Amendment 62 amends clause 600(2) which amends Schedule 6 of the *Transport Infrastructure Act 1994*, to insert definitions for *designation*, and for *development*.

Amendment 63 amends clause 600(2) which amends Schedule 6 of the *Transport Infrastructure Act 1994*, to omit the definition for *infrastructure designation*. Under amendments proposed to the Planning Bill, this term is replaced by the term *designation*.

Amendment 64 amends clause 600(2) which amends Schedule 6 of the *Transport Infrastructure Act 1994*, to insert a definition for *planning application*.

Amendment 65 amends clause 600(2) which amends Schedule 6 of the *Transport Infrastructure Act 1994*, to insert definitions for *referral agency*, and for *referral agency's response*.

Amendment 66 amends clause 637 to reflect changes made to section 22A of the *Vegetation Management Act 1999* as a result of the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016*.

Amendment 67 omits clause 639 because the heading the clause was amending was omitted by the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016*.

Amendment 68 omits clause 640 because the section the clause was omitting was removed by the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016*.

Amendment 69 omits clause 641 because the section the clause was amending was removed by the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016*.

Amendment 70 omits clause 642 because the section the clause was amending was removed by the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016*.

Amendment 71 amends clause 661 to update numbering as a result of changes made to the *Vegetation Management Act 1999* by the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016*.

Amendment 72 amends clause 670 to reflect a change made to the heading of section 814 of the *Water Act 2000* by the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016*.

Amendment 73 amends clause 673 to clarify the reference to a ‘development approval’ in replaced section 966 of the *Water Act 2000*.

Amendment 74 amends clause 692 to clarify the reference to a ‘development approval’ in replaced section 561 of the *Water Supply (Safety and Reliability) Act 2008*.

Amendment 75 amends clause 692 for consistency of the term ‘relevant operational work’ in replaced section 561 of the *Water Supply (Safety and Reliability) Act 2008*.