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Changes to the Integrated Development Assessment System (IDAS): The Sustainable Planning Bill 2009 (Qld)

On 19 June 2009, the Minister for Planning and Infrastructure, the Hon SJ Hinchliffe MP, introduced the Sustainable Planning Bill 2009 (Qld) (the Bill) into the Queensland Parliament. Although the Bill seeks to overhaul and replace the Integrated Planning Act 1997 *(Qld) (the* IP Act*), it does not propose to completely revolutionise planning and development law in Queensland. The Bill retains the key concepts and processes of the* IP Act *but introduces some new features and amends others to overcome identified issues arising out of the operation of the current legislation.*

The focus of discussion in this Research Brief is on the proposed changes to the Integrated Development and Assessment System (IDAS) which provides the framework for approval of development in Queensland. While many aspects of IDAS are similar to the current system under the IP Act*, there are some important reforms. These include:*

- *a new category of 'prohibited development';*
- *more stringent requirements to be met before development applications can be accepted as 'properly made';*
- *a new 'compliance assessment' stage for 'technical' type developments;*
- *shorter timeframes for applicants to undertake certain actions with a limited ability to revive lapsed applications;*
- *clearer assessment and decision rules;*
- *deemed approvals for certain code assessable applications not decided within the specified timeframe; and*
- *broader Ministerial powers for directing how applications are to be dealt with and for calling-in applications of certain types.*

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EXECUTIVE SUMMARY

On 19 June 2009, the Minister for Planning and Infrastructure, the Hon SJ Hinchliffe MP, introduced the **Sustainable Planning Bill 2009 (Qld)** (the Bill) into the Queensland Parliament. Although the Bill seeks to overhaul and replace the ***Integrated Planning Act 1997* (Qld)** (the *IP Act*), it does not propose to completely revolutionise planning and development law in Queensland. The Bill retains the key concepts and processes of the *IP Act* but introduces some new features and amends others to overcome identified issues arising out of the operation of the current legislation.

The focus of discussion in this Research Brief is on the changes to the **Integrated Development and Assessment System** (**IDAS**) which provides the framework for approval of development in Queensland. While many aspects of IDAS are similar to the current system under the *IP Act*, there are some important reforms considered in this Brief.

This Brief begins, in **section 2**, with a short overview of the *IP Act*. The *IP Act* brings together over 30 pieces of legislation containing planning and development approval processes into one framework which is performance based and with timeframes intended to create efficiencies.

After almost 10 years of operation and with the impending finalisation of local government planning schemes under the *IP Act*, the Queensland Government decided that the time was right to **review** the operation of the legislation and its processes. A comprehensive review of the *IP Act* began in February 2006, involving extensive consultation, the release of a Discussion Paper (*Dynamic Planning for a Growing State*) in August 2006 and the publication of an implementation report, *Planning for a Prosperous Queensland: A reform agenda for planning and development in the Smart State* (**section 3**). ***Planning for a Prosperous Queensland*** describes how the Queensland Government will respond to various systemic, operational and cultural issues identified in the review of the *IP Act*. In doing so, it sets out 80 legislative reform actions, some of which are outlined in **section 3.2**.

As discussed in **section 4** of the Brief, the *IP Act* establishes the IDAS process to regulate development. Although consultation during the review revealed support for the fundamental principles of IDAS, **section 4.2** sets out various **stakeholder concerns** and the possible changes required to improve its operation. The issues raised include the complexity of IDAS' operation; constantly changing regulatory requirements; difficulties in determining the agencies to which development applications should be referred; complex assessment and decision rules; and too much focus on process and timeframes rather than good development outcomes. *Planning for a Prosperous Queensland* set out a number of **proposals** for the improvement of IDAS, many of which are reflected in the Bill.

Before moving to examine the reforms to IDAS proposed by the Bill, **section 5** of the Brief first sets out a summary of other main proposed amendments to the *IP Act*. Those include proposed **changes** in relation to **State planning instruments** (State planning regulatory provisions; regional plans, State Planning Policies and

Standard Planning Scheme Provisions); **local planning instruments** (planning schemes; temporary local planning instruments and planning scheme policies); **planning partnerships** (concerning declared master planned areas); **designation of land** for community infrastructure; and **infrastructure** charging and funding.

Section 6 turns to the main focus of this Brief – the proposed changes to **IDAS**. Each of the following will be discussed:

- the **categories of development**, including the proposed new category of '**prohibited development**' and types of **approvals** (**section 6.1-6.2**);
- the role of **assessment managers** (who assess and decide the development application) and **referral agencies** (who have assessment functions and input regarding the development application) (**section 6.3**);
- the **application stage** of IDAS and the more stringent requirements to be met before applications can be accepted as 'properly made' (**section 6.4.1**);
- various proposed changes to improve the operation of the **information and referral stage** (e.g. shorter timeframes for applicants to undertake certain actions such as responding to information requests (down from 12 months to 6 months), but with a limited ability to 'revive' lapsed applications in certain situations); and of the **notification stage** during which the public is invited to comment on the application, including objections. Included in the information and referral stage are new provisions for picking up 'missed' referral agencies without unduly delaying the IDAS process and clearer and more flexible ways of changing applications before they are determined (**section 6.4.2-6.4.3**);
- proposals to clarify and improve the **decision and assessment stage** including clarifying the process for code and impact assessment and setting out decision making rules for development applications and for preliminary approvals. The Bill also introduces **deemed approvals** for certain code assessable applications not decided within the specified timeframe (**section 6.4.4)**;
- the proposed introduction of a new **compliance assessment stage** for 'technical' type applications for development, documents or work (**section 6.4.5)**;
- proposed amendments regarding the duration and **lapsing** of some approvals (**section 6.4.6)**;
- proposals for consolidating, simplifying and making more flexible, the process for **changing development approvals** (**section 6.4.7**);
- proposals to simplify **dealing** with decision notices and approvals (**section 6.4.8**);
- proposed changes to and extensions of **Ministerial IDAS powers** (**section 6.5**); and
- proposed reforms to improve access to the dispute resolution process such as proposals for expanding the jurisdiction of the current Building and Development Tribunal (to become Building and Development Dispute Resolution Committee) (**section 6.6**).

1 INTRODUCTION

On 19 June 2009, the Minister for Planning and Infrastructure, the Hon SJ Hinchliffe MP, introduced the Sustainable Planning Bill 2009 (Qld) (the Bill) into the Queensland Legislative Assembly. The Minister said that in overhauling and replacing the *Integrated Planning Act 1997* ((Qld)) (the *IP Act*), the Bill marks the culmination of the most '*significant reform in Queensland's land use planning and development framework … in over a decade since the integrated framework was introduced* …'.[1] Impetus for the reform was the need, in the face of continuing high population growth, to ensure that Queensland's planning and development legislation allows for a '*quick and efficient process which stimulates our economy, while protecting … the lifestyle* [of the State]'.[2]

The Minister noted that the new planning legislation was '*evolutionary, not revolutionary. The key concepts of IPA remain sound and contemporary – that is, it is integrated, performance based and relies on the three-tiered approach to planning; state, regional and local elements*'.[3] Thus, the new Bill retains the key concepts and processes of the *IP Act* but also seeks to introduce some new features and to amend others to overcome identified issues arising out of the operation of the current legislation.[4]

The focus of discussion in this Research Brief is on the changes to the Integrated Development and Assessment System (IDAS) which provides the framework for approval of development under the *IP Act*. While many aspects of the proposed new IDAS are similar to the current IDAS, there are some important reforms which will be discussed in some detail.

2 BACKGROUND

In 1998, the *IP Act* brought together over 30 pieces of legislation containing planning and development approval processes into one framework which was

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1 Hon SJ Hinchliffe MP, Minister for Infrastructure and Planning, Sustainable Planning Bill 2009 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 19 June 2009, pp 1152-1155, p 1152.

2 Hon SJ Hinchliffe MP, Second Reading Speech, p 1152.

3 Hon SJ Hinchliffe MP, Second Reading Speech, p 1153.

4 Wendy Evans, Senior Associate, 'The Sustainable Planning Bill 2009', Deacons, June 2009, www.deacons.com.au, para 5.

performance based and setting timeframes intended to create efficiencies.[5] There has been a gradual integration of other pieces of legislation into the *IP Act* which has replaced the separate legislative requirements and processes with a single integrated approval system – the Integrated Development Assessment System (IDAS).[6] The main features of the *IP Act* include integrated performance based planning; IDAS; infrastructure planning and charging; State planning policies; State reserve powers, regional planning provisions; the designation of land for community infrastructure; and private certification of building work.

3 REVIEW OF THE INTEGRATED PLANNING ACT 1997

After almost 10 years of operation and with the impending finalisation of local government planning schemes under the *IP Act*, the Queensland Government decided, in early 2006, that the time was right to review the operation of the legislation and its processes.[7] This decision was also influenced by the dramatic growth in Queensland's population, especially along coastal and in resource rich areas.[8] It has been predicted that Queensland may have around 2.4 million households by 2026, with the rate of household growth possibly exceeding the population growth rate.[9] The consequential pressure on housing availability and affordability and on the environment provides impetus for a timely, good quality and transparent planning and development framework.[10]

A comprehensive review of the *IP Act* began in February 2006 when the then Minister for Planning, the Hon Desley Boyle MP, announced her intention to hold a summit seeking ideas from stakeholders about reforming the *IP Act*.[11] Ms Boyle

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5 Queensland Government, Department of Local Government, Planning, Sport and Recreation (now the Department of Infrastructure and Planning), Planning for a Prosperous Queensland: A reform agenda for planning and development in the Smart State (Planning for a Prosperous Queensland), August 2007, p ix.

6 Department of Infrastructure and Planning (DIP), 'IDAS assessment managers and referrals', Implementation Note 7, p 1.

7 Planning for a Prosperous Queensland, p ix.

8 Planning for a Prosperous Queensland, p x.

9 Planning for a Prosperous Queensland, Highlights from the Report, August 2007, p 1.

10 Planning for a Prosperous Queensland, p x.

11 Hon Desley Boyle MP, Minister for Environment, Local Government, Planning and Women, 'Boyle to reform Integrated Planning Act', *Media Statement*, 22 February 2006.

MP said that, while the *IP Act* was designed to streamline the development process, there remained concerns that decision making was often cumbersome, slow and unclear, causing dissatisfaction among councils, communities and developers. The former Planning Minister also noted claims that layers of bureaucracy had led to development cost 'blow outs' with those higher costs being passed on to homebuyers at a time of large population growth in regional and South East Queensland. The Minister said that the *IP Act* needed 'fixing' to make it more efficient, simple and user friendly, and to clarify the roles and responsibilities of planners and councils.[12]

Apart from the IPA Review Summit in March 2006, further targeted consultation was undertaken to identify key review issues (including a State agency workshop, stakeholder breakfasts and face to face interviews). Further, people were able to make submissions on *IP Act* improvements.[13] A Discussion Paper, *Dynamic Planning for a Growing State*, was released in August 2006 canvassing 86 possible improvements to the planning legislation. A second round of consultations ensued up until November 2006.

While stakeholder consultation revealed general consensus that the principles and purpose of the *IP Act* continued to be appropriate and sound, it also indicated that there were legislative issues requiring attention and a need for cultural and operational change to support any legislative amendments.[14]

In August 2007, the Queensland Government released an implementation report, Planning for a Prosperous Queensland: A reform agenda for planning and development in the Smart State (Planning for a Prosperous Queensland), to build upon many proposals contained in the abovementioned Discussion Paper and to address the various systemic, operational and cultural issues that had been identified during stakeholder consultation.[15] Further consultation has occurred since the release of Planning for a Prosperous Queensland, focusing on not just legislative, but also required operational and cultural change. The Sustainable Planning Bill 2009 (Qld) (the Bill), introduced into the Queensland Parliament on 19 June 2009, is part of the reform agenda set out in Planning for a Prosperous Queensland and has also been informed by the consultation process.

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12 Hon Desley Boyle MP, 'Boyle to reform Integrated Planning Act'.

13 Graeme Bolton, Director IPA/IDAS Implementation Program, Department of Local Government, Planning, Sport and Recreation, 'Dynamic planning for a growing state', *Queensland Planner*, Vol 47(1), p 30.

14 Planning for a Prosperous Queensland, p x.

15 Planning for a Prosperous Queensland, p iv.

3.1 KEY TERMS

For readers who are unfamiliar with the various policies and instruments covered by the *IP Act* and by the new Bill that will be mentioned throughout this Brief, a small glossary of some key concepts and acronyms is found in the **Appendix**.

3.2 PLANNING FOR A PROSPEROUS QUEENSLAND

The intention of the Planning for a Prosperous Queensland implementation report was to describe how the Queensland Government would respond to the various systemic, operational and cultural issues identified in the review of the *IP Act*.[16] In doing so it sets out 80 legislative reform actions.

Planning for a Prosperous Queensland listed the key reform actions (involving legislative, cultural and operational improvements) as being (see pp 2-30 of the report for the full range of reform actions):[17]

- streamlining and simplifying IDAS – this aspect of the reform process forms the focus of this Research Brief and will not be discussed further at this point;
- providing transparent and equitable infrastructure planning and charging through simplification of the process for developing and implementing infrastructure charges schedules (ICS)[18] and priority infrastructure plans (PIPs);
- enabling the Minister for Planning to make standard planning scheme provisions for adoption in local government planning schemes to overcome the current situation of complex and inconsistent planning schemes across the State. It is intended that standard planning scheme provisions will increase the consistency and quality of planning schemes and result in benefits such as more certainty and clarity for end users. Standard planning scheme provisions are seen as another State planning tool for providing an effective, consistent expression of policy for State interests that constitute specific development assessment criteria;
- improving community engagement in local planning and in the preparation of planning schemes in order to enhance community confidence and resolve issues at this point rather than later through the development approval process. It was noted that community confidence in planning can be undermined when the

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16 Planning for a Prosperous Queensland, p i.

17 For a brief overview, see Planning for a Prosperous Queensland, Executive Summary.

18 An infrastructure charges schedule prepared under the *IP Act* identifies infrastructure networks for which a charge is proposed, sets out standards of service for each network, and identifies the relevant charge payable: see Ch 5, Part 1, Div 4 of the *IP Act*.

community opposes a development proposal but it is assessed as consistent with a planning scheme which the community has had no involvement in making;

- ensuring that only State planning instruments (e.g. State planning regulatory provisions; regional plans, State Planning Policies, and standard planning scheme provisions) are used to articulate and integrate the interests of the relevant State agency in planning schemes and development assessment. At present, many State agencies use informal mechanisms to express their interest in planning and development assessment rather than the formal ones just mentioned. This can cause confusion and uncertainty. In addition, the relationship and ranking of each of the State instruments applying to development assessment will be clarified and it will be clear that State planning instruments prevail over local planning instruments where there is a conflict;
- reforming State Planning Policies (SPPs (these are State instruments)) to make them more effective in achieving planning and development outcomes. A SPP program will give clear direction on the issues relevant to policy development and SPPs will complement regional plans and standard planning scheme provisions as a tool for the State Government to provide effective policy direction for planning and development;
- broadening the role of the Minister for Planning and the Department of Infrastructure and Planning (DIP) to include proactive leadership in policy development and the delivery of good outcomes (e.g. through developing a range of further roles for the Department and expanding the Minister's IDAS powers, including the call-in powers for development applications);
- making all future regional plans statutory State planning instruments (rather than some being statutory and some non-statutory) to provide an effective, consistent and flexible statutory regional planning framework that responds to particular regional needs and issues. Regional plans are the only State instruments able to integrate and reconcile State interests for a geographic area and allow the State to articulate its desired planning and development outcomes;
- reforming preliminary approvals. Preliminary approvals have sometimes been used to 'get around' planning schemes by seeking broad relaxations from scheme requirements etc., leading to the undermining of those planning schemes and rights of submitters. The reforms are intended to overcome the current situation while also accommodating the need for flexibility to meet changing circumstances and development innovation;
- proactively managing historic approvals and leases and tightening policy on inappropriate development in sensitive environments;
- improving accessibility of dispute resolution through expanding the jurisdiction of the Building and Development Tribunal to give applicants an option of alternative, inexpensive and timely resolution of disputes regarding development applications, including matters that might currently fall within the jurisdiction of the Planning and Environment Court;

- developing a framework for stakeholder engagement, consultation and communication in planning and development assessment with all stakeholders having a role in supporting a cultural shift within the planning and development sector;
- building the capacity of planning and development professionals and staff through training and other measures.

Many of the above recommended legislative reforms are picked up in the Bill and will be considered further in the appropriate context when discussing the proposed new provisions.

4 OPERATION OF THE CURRENT IDAS PROVISIONS

Chapter 3 of the *IP Act* establishes the Integrated Development Assessment Scheme (IDAS) for the purpose of integrating State and local government assessment and approval processes for development. IDAS is a comprehensive process for the making of, assessing, and deciding development applications in Queensland. The main exceptions to developments covered by IDAS include approvals for mining and petroleum-related activities, and developments in certain locations (such as those in urban land development areas under the *Urban Land Development Authority Act 2007* (Qld)). There are presently four stages of IDAS: the application stage; the information and referral stage; the notification stage; and the decision stage. However, not all stages will apply to any one particular application.

Apart from the *IP Act*, there are other pieces of legislation which regulate development across the State and protect the environment (e.g. the *Environmental Protection Act 1994* (Qld)).

4.1 PROPOSALS FOR STREAMLINING AND SIMPLIFYING IDAS

Stakeholder consultation during the review of the *IP Act* indicated that the fundamental principles of IDAS were still supported but that a number of changes were needed to improve its operation. Planning for a Prosperous Queensland (p 2) said that implementing IDAS has involved removing separate regulatory approval processes and integrating them through IDAS. Given that the process of integration is almost complete, there is now the opportunity for simplification and rationalisation of the approvals and processes that have been amalgamated. Planning for a Prosperous Queensland noted stakeholder concerns about IDAS including (but see p 2 for the full range) the following:

- complexity of IDAS' operation;

- constantly changing regulatory requirements and inconsistent interpretation of the rules by different individuals and local governments;
- difficulty for users in working out which agencies are the 'referral agencies' (to which development applications must be referred for assessment);
- that even poor quality or incomplete development applications will be accepted as 'properly made';
- assessment managers do not always comply with IDAS timeframes;
- that there is too much focus on process and timeframes rather than good development outcomes;
- arrangements for changing development applications before they are decided upon are inconsistent and rigid; and
- assessment and decision rules are complex and, sometimes, ineffective.

Planning for a Prosperous Queensland (pp 1-2) proposed a number of initiatives for substantial improvements of IDAS, including the following:

- streamlining and simplifying assessment and referral triggers and a consolidation of all assessment and referral requirements into new Regulations;
- simplifying the application stage and clarifying responsibilities of the applicant and the assessment manager;
- reorganising the provisions about lapsing of development applications so that they are easier to find;
- combining the variations to the IDAS process currently found in other legislation within IDAS itself;
- inserting a limited range of 'prohibited development' through a new schedule;
- providing a means to prevent the acceptance of incomplete development applications and requiring the submission of identified supporting information to improve the quality and content of applications (but with more onus on assessment managers to tell applicants if their applications cannot be accepted and the ways to address the deficiencies);
- clarifying how applications can be changed (including an easier way to change an application to include a 'missed' referral agency);
- reducing the 'default' time for an applicant to respond to a request for more information (from 12 months to 6 months);
- reforming of timeframes, including reducing some timeframes;
- simplifying code and impact assessment and decision making processes;
- making it clear under what circumstances assessment managers and referral agencies can depart from planning instruments when making decisions;
- simplifying and consolidating more flexible arrangements for changing development approvals;
- reviewing the mechanism for the making of development applications under a superseded planning scheme; and

- expanding the current compliance assessment process to apply to a wider range of compliance matters.[19]

Among the various operational changes that have been, or are being, implemented are the 'Smart eDA program,' an electronic process for lodging and tracking development applications across the State which is intended to simplify and streamline the development assessment system; and the RiskSmart initiative to apply a risk management approach to development assessment and enable low-risk development applications to be quickly assessed against planning scheme provisions.[20]

5 SUSTAINABLE PLANNING BILL 2009 (QLD)

The consultations undertaken during the Review of the *IP Act* indicated a need for new legislation to replace the *IP Act*. The outcome is the introduction, on 19 June 2009, of the Sustainable Planning Bill 2009 (Qld) (the Bill).[21]

The Explanatory Notes (p 2) indicate that the outcomes sought to be achieved by the Bill are a significantly improved and streamlined land use planning and development framework and systems that reduce costs and get development on the ground sooner through:

- streamlining of plan making and development assessment to provide more certainty, expedition and cost benefits for applicants and local governments;
- clarity in plan making to allow for faster assessments and cost benefits; and
- more flexibility and responsiveness, including moving some processes out of the regulatory framework.

Plan making is also sought to be improved in various ways specified on pp 2-3 of the Explanatory Notes. Some plan making aspects will be discussed briefly under the next heading.

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19 For other identified initiatives see Planning for a Prosperous Queensland, p 3.

20 See the DIP Planning and Reform Webpage at http://www.dip.qld.gov.au/planning-reform/the-risksmart-initiative.html.

21 The Explanatory Notes to the Bill (at p 2) observe that some of the proposals set out in Planning for a Prosperous Queensland were picked up in recent amendments to the *IP Act* made by the *Urban Land Development Authority Act 2007* (Qld), which are now reflected in the new Bill. Those amendments included extensions to Ministerial direction and call-in powers; an expanded regional planning framework and the introduction of State planning regulatory provisions. The proposed legislation will be accompanied by a package of regulations and statutory guidelines.

The Explanatory Notes (p 3) state that ***development assessment processes*** are sought to be enhanced by the various measures to be introduced by the Bill, and which will be the focus of this Research Brief.

The purpose of the Bill is stated in **cl 3** as being to seek to achieve ecological sustainability ('ecological sustainability' is defined in **cl 8** and is similar to the *IP Act* definition) by:

- managing the process by which development takes place including ensuring that the process is accountable, effective and efficient and delivers sustainable outcomes;
- managing the effects of development on the environment; and
- continuing to coordinate and integrate planning at the local, regional and State levels.

Entities are required by **cl 4** to advance or have regard to the purpose of the Bill in performing their functions or exercising their powers (e.g. when acting as an assessment manager assessing a development application under IDAS) but this requirement will not apply to code assessment or compliance assessment of development applications.[22] However, it is envisaged that in preparing a code or standard for compliance assessment, an entity will seek to advance the purpose of the Bill in doing so and this will then be reflected in the code or compliance assessment.[23]

An illustrative guide is provided by **cl 5** to indicate the 7 ways in which the purposes of the Bill may be advanced. The range of matters to be considered are broad to take account of emerging issues such as climate change, sustainable use of renewable natural resources and prudent use of non-renewable natural resources; and urban congestion, housing choice and diversity.

The new name of the Bill, express references in the Bill to climate change, and inclusion of cls 4 and 5 appear to underpin the intended emphasis on the achievement of ecological sustainability.[24] However, the comment has been made

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22 The *Explanatory Notes* (p 25) state that '*this is because code assessment and compliance assessment are bounded and therefore inconsistent with the open, discretionary nature of assessment required by* [cl 4]'.

23 *Explanatory Notes*, p 25.

24 Wendy Evans, para 7. It has been observed that given that the previous SEQ Regional Plan (and the new SEQ Regional Plan 2009-2031) incorporates issues concerning climate change, the Bill's purpose is likely to be implemented through other regional plans and, possibly, SPPs so that it filters down to local planning instruments.

that discussions about whether the Bill will help to achieve a more sustainable pattern of development will be ongoing.[25]

This Research Brief considers the maintained but reformed IDAS covered by **Chapter 6** of the Bill followed by a very brief discussion about Appeals and Reviews contained in **Chapter 7**. Firstly, however, a brief overview is provided of some of the other main proposed changes to the *IP Act* by other parts of the Bill, particularly to plan making processes at the State and local government level.

5.1 Summary Of Main Proposed Changes Regarding Planning Instruments

The following summary of the Bill is by way of brief overview only.

5.1.1 Chapter 2 – State Planning Instruments

State Planning Instruments are (see *Explanatory Notes*, pp 32-38):

- A **State planning regulatory provision** – under **Ch 2**, **Part 2** – is an instrument made for an area to advance the Bill's purpose. State planning regulatory provisions can be used for a number of things such as to provide regulatory support for regional or master planning or to protect planning scheme areas from adverse impacts. These provisions are made by the Minister administering the Bill (the Minister for Planning and Infrastructure – 'the Minister') and, in a designated region, the regional planning Minister. A State planning regulatory provision is a 'State interest' for the purpose of the Bill. A 'State interest' (defined in Sch 3) is an interest that the Minister considers affects an economic or environmental interest of the State or part thereof, including sustainable development; or an interest that the Minister considers affects the interest of ensuring there is an efficient, effective and accountable planning and development assessment system.

  A State planning regulatory provision prevails over other planning instruments, plans, policies or codes. It can specify categories of development, including prohibited development; require code assessment and/or impact assessment; include an IDAS code; or otherwise regulate development (**cls 19-22**). Existing State planning regulatory provisions made under the *IP Act* will continue in force (**cl 766**);
- A **regional plan** – under **Ch 2, Part 3** – is a plan applying to a particular region, made by the regional planning Minister for the region, to advance the purpose of the Bill by providing an integrated planning policy for that region.

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25 Wendy Evans, para 7.

An example is the newly released SEQ Regional Plan 2009-2031. A regional plan is a State interest. Regional plans and State planning policies (SPPs – discussed below) are intended to inform each other during the preparation of planning instruments so a new SPP about a matter should consider how the matter is treated in the regional plan and vice versa (see *Explanatory Notes*, p 36). For assessing development, a regional plan will prevail over SPPs and local planning instruments if there is inconsistency (see **cl 26** and *Explanatory Notes*, p 36). To the extent that a regional plan is reflected in a planning scheme or a structure plan in a master planned area, the regional plan will not apply in assessing an application (*Explanatory Notes*, p 36). Current regional plans under the *IP Act* will remain in force (**cl 768**);

- **State planning policies** (**SPPs**) – **Ch 2**, **Part 4** – are made by the Minister or by another Minister with the Minister's endorsement. SPPs pronounce the State's policy about a matter of State interest. SPPs are instruments applying throughout the State, unless stated otherwise, and prevail over local planning instruments but are subordinate to State planning regulatory provisions and regional plans (*Explanatory Notes*, pp 35-36). Under the Bill it is proposed that **temporary SPPs** can be made where there is urgent need to protect or give effect to a state interest, to last for a maximum of 12 months only, with no requirement for public consultation. They will take immediate effect only if necessary. To the extent a SPP is reflected in a planning scheme or structure plan (in a master planned area) or a regional plan, the SPP does not apply in assessing a development application (*Explanatory Notes*, p 36);[26]
- **Standard planning scheme provisions** – **Ch 2**, **Part 5** – are proposed new instruments to be made by the Minister. They will seek to achieve consistent local planning instruments by being progressively reflected in local government planning schemes as new schemes are made. Local planning instruments, such as planning schemes as well as master and structure plans (in declared master planned areas), must be consistent with the standard planning scheme provisions. Standard planning scheme provisions will prevail over local planning instruments to the extent of any inconsistency and will contain mandatory and optional components (*Explanatory Notes*, p 48). They do not regulate or affect development themselves but will affect development once incorporated into a local planning instrument (*Explanatory Notes*, p 48). The *Explanatory Notes* (p 49) indicate that the reform is intended to overcome the complexity and inconsistency of many local planning schemes by seeking greater standardisation of key elements of planning schemes across the State (e.g. standard definitions and standard zones, codes, limited prescribed levels of assessment; mandatory and optional provisions to incorporate local content and

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[26] Clauses 773-775 deal with the continuing effect of SPPs made under the *IP Act* which will depend upon how long they have been made to have effect for.

variation (**cl 50**); *Explanatory Notes*, p 50). It is also hoped that the standard planning scheme provisions will allow a more consistent reflection of State interests in planning schemes (*Explanatory Notes*, p 49).

Apart from the introduction of standard planning scheme provisions, Ch 2 also allows SPPs and State planning regulatory provisions to be made by any Minister jointly with the Minister for Planning; identifies and establishes temporary SPPs (discussed above); establishes a single, streamlined and performance based process for making, amending and repealing all State planning instruments to replace the current diverse processes for each instrument; and sets out a hierarchy of instruments in cases of conflict (*Explanatory Notes*, p 33).

5.1.2 Chapter 3 – Local Planning Instruments

Local planning instruments under the Bill have not altered significantly from those currently made under the *IP Act*.[27] These instruments are (see *Explanatory Notes*, pp 62-83):

- **Planning schemes** – under **Ch 3**, **Part 2** – are statutory instruments made by a local government to provide an integrated planning policy for the local government's planning scheme area.[28] A planning scheme identifies strategic outcomes for the area (desirable environmental, social, economic outcomes) and measures to facilitate the achievement of those outcomes (e.g. identifying categories of development – self-assessable, assessable etc.) (see **cl 88**).[29] A planning scheme made under the Bill must reflect the new standard planning scheme provisions (see above) and it will prevail over a planning scheme policy to the extent of any inconsistency. Other key elements of a planning scheme include that it coordinates and integrates matters dealt with in the planning scheme; must include a priority infrastructure plan; and must include a structure

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27 B McCredie, R Meurling & A Vella, 'Focus: Queensland's new Sustainable Planning Bill', *Allens Arthur Robinson Update*, June 2009.

28 However, cl 82(2) provides that a planning scheme may be applied for assessing prescribed tidal work in the local government's tidal area to the extent stated in a code for such work.

29 One notable change is that the concept of a 'desired environmental outcome' has given way to a requirement for planning schemes to identify strategic outcomes and the measures to facilitate such outcomes: McCullough Robertson Lawyers, Planning and Environment Group, 'Changes to Queensland's Planning Laws – The Sustainable Planning Bill', *Focus*, 23 June 2009, p 1. It has been suggested that the abolition of 'desired environmental outcomes' removes what could be seen as a 'back door' means of introducing prohibition: David Nicholls, HopgoodGanim Lawyers, 'Sustainable Planning or Sustainable Development? Queensland's Progress Towards an Efficient Development Assessment System', *Exclusive Briefing Paper*, July 2009, p 13.

plan, where relevant. The core matters for their preparation are land use and development (e.g. constraints on developing in flood prone areas); and infrastructure and valuable features (e.g. to protect areas of ecological significance such as within a wildlife corridor identified in a regional plan). Existing planning schemes continue to have effect under the Bill (**cl 778**);

- **Temporary local planning instruments** – under **Ch 3**, **Part 3** – are local government statutory instruments seeking to protect all or part of a planning scheme area from adverse impacts. The definition has altered from that under the *IP Act* (see *Explanatory Notes*, p 76). A temporary local planning scheme can be made by a local government only if the Minister is satisfied about a range of things in cl 105: there is a significant risk of serious environmental harm or serious adverse cultural, economic or social conditions occurring in the planning scheme area; and that a delay in amending the planning scheme would increase the risk; and that State interests would not be adversely affected by the temporary instrument; and that the temporary instrument appropriately reflects the standard planning scheme provisions. It is intended to address a specific issue, not be a comprehensive planning instrument so it may apply to all or part of a planning scheme area (*Explanatory Notes*, p 76). It can suspend or affect the operation of the planning scheme for up to 12 months but does not amend it (**cl 104**). A temporary local planning instrument can do things such as declare categories of development (e.g. self-assessable, assessable etc. or create prohibited development if the standard planning scheme provisions allow that prohibition); or identify codes for development (**cl 106**). Existing temporary local planning instruments continue to have effect under the Bill (**cl 782**);
- **Planning scheme policies** – under **Ch 3**, **Part 4** – are statutory instruments that support the local dimension of a planning scheme and local government actions under the Bill for IDAS and for making or amending its planning scheme (**cl 108**). Thus, as it is intended to just support the scheme, any substantive planning policies will be contained within the planning scheme itself. It is, however, a statutory instrument but it is subservient to any other planning instruments in the event of inconsistency (**cls 109**, **112**). Existing planning scheme policies continue to have effect under the Bill (**cl 785**);

Chapter 3 places all provisions about local planning instruments within the same chapter to improve readability and establish a hierarchy of instruments with State instruments prevailing over local planning instruments in the event of any inconsistency (*Explanatory Notes*, p 62). Reviews of all local planning instruments are intended to occur every 10 years, instead of the current 8 year cycle, to promote forward planning and to more closely align with other planning and policy timeframes.[30]

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30 'Proposed changes to planning and development in Queensland – Summary of Changes', p 2.

The process for asking a council to apply a superseded planning scheme will be simplified to give the new planning instrument its full effect more quickly. The request must be made within 1 year after the day the new planning scheme takes effect (down from 2 years under the *IP Act*).[31] Different timeframes and processes will apply than those currently operating under the *IP Act* and rights to compensation will be provided. However, these matters are not dealt with in this Brief (see *Explanatory Notes*, pp 70-75 for further information).

The process for making and amending local planning instruments has been moved out of the *IP Act* and will be put into a statutory guideline to provide more flexibility and to ensure these instruments reflect current drafting standards.[32]

With the aim of enabling more effective protection and promotion of State interests through local planning instruments, the Planning Minister will have broader powers to direct local governments to make or amend a planning instrument. The Minister will be able to give a direction to amend such planning instrument to make it consistent with standard planning scheme provisions; to make or amend a planning instrument himself or herself where urgent action is needed to protect or give effect to a State interest and to amend a planning instrument himself or herself to reflect the standard planning scheme (**cls 125-130**; *Explanatory Notes*, pp 84-87).

5.1.3 Chapter 4 – Planning Partnerships

Chapter 4 of the Bill contains the substance of provisions currently found in Ch 2, Part 5B of the *IP Act* dealing with **master planning** arrangements through the making of structure and master plans for master planned areas (i.e. designated regions in a local government planning scheme or in a document made under a regional plan). A master planned area is the subject of integrated land use and infrastructure planning (see *Explanatory Notes*, pp 87-88).

The new Ch 4 summarises the process needed to identify and designate master planned areas, the process for making structure plans, and the process for making and approving master plans (**cl 132**). Structure plans and master plans apply only to master planned areas. The Explanatory Notes (p 88) observe that structure and master plans are developed in a collaborative way, involving State and local governments and private persons, in key urban development areas to address housing affordability issues. Such collaboration at the planning stage is intended to enable time and cost savings at the development assessment stage. Local governments will make **structure plans** (see Ch 4, Part 2) in conjunction with the

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31 'Proposed changes to planning and development in Queensland – Summary of Changes', p 2.

32 'Proposed changes to planning and development in Queensland – Summary of Changes', p 2.

State. Structure plans are integrated land use plans setting out the broad environmental infrastructure and development intent to guide detailed planning for the master planned area. They are instruments, form part of the planning scheme and must reflect the standard planning scheme provisions. Among other things a structure plan must set out a structure plan area code; identify master planning requirements; state categories of development etc (**cl 141**). A **master plan** is about the detailed planning of the master planned area and is dealt with in Ch 4, Part 3.

5.1.4 Chapter 5 – Designation of Land for Community Infrastructure

Current *IP Act* provisions about community infrastructure designations are to be contained in a separate chapter in the Bill because they are, according to the Explanatory Notes (p 103), a 'distinct and unique planning tool.' However, there are no other major changes.[33]

5.1.5 Chapter 8 – Infrastructure

Chapter 8, **Part 1** of the Bill seeks to establish a mechanism for funding 'user pays' infrastructure (where an end user can be identified) while encouraging an integrated approach to infrastructure planning, land use and development decision making. Examples of the envisaged infrastructure include internal reticulation networks, internal local streets, and local parks.

The features of the infrastructure charging regime (see Explanatory Notes, pp 280-281) include that charges are levied as a user charge not a condition on development approval; can be levied only for development infrastructure or basic services for an identifiable user (e.g. water supply, sewerage, roads, parks, not for social infrastructure, such as schools or State roads, police, where it is harder to identify an end user in advance); may only be for set items in a priority infrastructure plan forming part of a planning scheme and must be justified over other funding methods; and there must be a method for calculating charges so that they can be apportioned fairly among users. The processes for making and amending priority infrastructure plans have been moved out of the legislation and will be placed in a statutory guideline to allow more flexibility.

Part 2 of **Ch 8** covers infrastructure agreements as an alternative to other funding mechanisms and also establishes accountability mechanisms for all agreements about infrastructure under the Bill. **Part 3** deals with funding State infrastructure

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[33] 'Proposed changes to planning and development in Queensland – Summary of Changes', p 3. A Regulation will list what is 'community infrastructure' for which the Minister or a local government may designate land.

(e.g. schools, State roads) in master planned areas. New arrangements for making infrastructure charges schedules – to be contained in the guideline – seek to ensure more equitable charging for infrastructure. **Part 4** provides a process for recipients of infrastructure charging notices to seek variations via negotiation with the issuing entity rather than needing to resort to a formal appeal.[34]

6 PROPOSED REFORMS TO THE INTEGRATED DEVELOPMENT ASSESSMENT SYSTEM (IDAS)

Chapter 6 of the Bill establishes IDAS under the proposed new legislative framework – a scheme which has, as noted by the Explanatory Notes (p 115), been a key feature of Queensland's planning and development assessment system since 1998.[35]

The *Explanatory Notes* (p 115) state that IDAS links integrated policies expressed through the range of planning instruments, policies and planning partnerships, established under Chapters 2, 3 and 4 (summarised earlier), with real outcomes 'on the ground'. The Bill seeks to do this '*through a flexible, responsive and accountable performance-based development assessment system*'.

Apart from being comprehensive, other key characteristics of IDAS, identified by the *Explanatory Notes* (pp 115-116), are:

- it is capable of applying at any *scale* of development from minor works (e.g. a pergola) to complex and major staged developments such as master planned communities;
- the four stages are *modular* in that not all stages apply to all development applications. A simple development might only involve two stages – application and decision – but a more complex proposal might involve all stages. Some development might require only compliance assessment;
- it is *performance-based* so development proposals are tested against policy benchmarks set under the Chapters 2 and 3 planning instruments, structure plans and master plans made under Chapter 4 and other policy benchmarks. If a proposal complies, it will usually gain approval (but there will be prohibitions on certain types of development);

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34 'Proposed changes to planning and development in Queensland – Summary of Changes', p 4.

35 Much of the information provided in this Research Brief about the *IP Act* is drawn from DIP's 'Planning and Development webpage' at http://www.dip.qld.gov.au/integrated-planning-act/integrated-development-assessment-system.html, and the 'Overview of IDAS' Implementation Note.

- it includes *checks and balances* so that, for example, the need for effective and timely approvals is balanced against rights of the public to be informed and to comment on proposals. Rights of redress are also provided; and
- it includes *accountabilities* on all participants to ensure the process is timely, transparent and fair – clear end points with rights of review or appeal attached.

6.1 CATEGORIES OF DEVELOPMENT

Under: **cl 7** of the Bill, 'development' (identical to the definition in s 1.3.2 of the *IP Act*) is broadly defined as:

- carrying out building work (e.g. building, moving or demolishing);
- carrying out plumbing and drainage work;
- carrying out operational work (e.g. extracting gravel, rock or soil; conducting a forest practice; clearing of vegetation; undertaking tidal works);
- reconfiguring a lot (e.g. creating lots by subdivision or amalgamating 2 or more lots etc.);
- making a material change of use of premises (e.g. starting a new use of premises or a new environmentally relevant activity).

Clause 10 defines each of the above activities.

Clauses 231-239 of the Bill deal with the various categories of development. The categories include the current ones under the *IP Act*:

- exempt development;
- self-assessable development; and
- assessable development.

However, two new categories are included:

- development requiring compliance assessment; and
- prohibited development (see **cl 231**).

Under the *IP Act*, it is essentially only development which is assessable or self-assessable that is regulated. Under the Bill, development is only regulated if it is self-assessable, assessable, development requiring compliance assessment, or prohibited development.[36] Otherwise, development is 'exempt development' which

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[36] A Regulation may prescribe that development is assessable, self-assessable, or requires compliance assessment (cl 232(1)). Also, a Regulation may prescribe certain development that a planning scheme, temporary local planning instrument, preliminary approval to which cl 242 applies or a master plan must not declare to be any of the aforementioned categories or to be prohibited development (cl 232(2)). A Regulation can also require code and/or impact assessment for assessable development (cl 232(3)). Further, a State planning regulatory

does not have to go through IDAS assessment and approval. The categories of development are now discussed in a little more detail (but for more specific information, **cls 235-239** and the *Explanatory Notes*, pp 122-123, should be consulted).

The first category is '**exempt development**' for which *no* development permit will be required but the development may have to comply with a State planning regulatory provision (e.g. the latter might impose a requirement on the way a development is to be undertaken) (**cl 235**).[37] Under the *IP Act*, Sch 9 lists development which is exempt from assessment against any local government planning scheme.

Self-assessable development can be carried under the Bill out without a development permit but it must comply with applicable codes and cl 574 provides that contravention is an offence (**cl 236**). **Sch 3** defines 'self-assessable development' as generally that prescribed under a Regulation for cl 232 and it also includes development declared as such under a State planning regulatory provision. For a planning scheme area, it includes development declared to be self-assessable under a planning scheme for the area; or under a temporary local planning instrument; or under a master plan if it is a declared master plan area; or in a preliminary approval to vary the effect of a planning scheme (a 'cl 242 preliminary approval' – a concept which will be explained later).

Currently, under the *IP Act*, self-assessable development must comply with any relevant codes or standards applying to the development (s 3.1.4(2), (3), s 3.1.10, Sch 8, Part 2).

Assessable development will require a development permit before it commences or an offence under cl 578 is committed (**cl 238**). 'Assessable development' is defined in **Sch 3** as generally meaning development that is prescribed by Regulation under cl 232; or is declared to be assessable development under a State planning regulatory provision. For a planning scheme area, it also includes other non-prescribed development declared to be assessable development under the planning scheme for the area; or under a temporary local planning instrument; or under a master plan for a declared master plan area; or in a cl 242 preliminary approval.

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provision; structure plan; master plan; temporary local planning instrument; preliminary approval to which cl 242 applies or a planning scheme can specify categories of development to be regulated via IDAS (cl 232 note). Clause 233 sets out the relationship between a Regulation and a planning scheme; temporary local planning instrument or local law (Regulation generally prevails but see cl 233(2)-(7)).

37 Clause 235(3) states how exempt development that is the natural and ordinary consequence of another aspect of regulated development can be affected by a planning instrument, master plan, development approval or compliance permit.

Under the *IP Act*, 'assessable development' is defined to be generally that found in Sch 8, Part 1 (examples of the many types are: certain 'environmentally relevant activities';[38] material change of use of premises in various situations such as railways, certain operational works involving clearing of native vegetation, certain lot configurations).[39] Assessable development is subject to the IDAS development approval process before any work can commence (s 3.1.4(1)) and it is an offence to carry out such development without an approval (s 4.3.1).

The two new categories of development under the Bill are 'development requiring compliance assessment' and 'prohibited development'.

'**Development requiring compliance assessment**' does not need a development permit but a compliance permit is required to undertake such development or an offence under cl 575 is committed (**cl 237**). Compliance assessment is dealt with later in this Brief.

'**Prohibited development**' cannot take place at all, IDAS does not apply to it, and it is an offence, under cl 581, to undertake prohibited development (**cl 239**). Prohibited development is defined (see **Sch 3**) generally as development mentioned in **Sch 1**; or declared to be prohibited development under a State planning regulatory provision.[40] In addition, future prohibitions can potentially be included in planning schemes, structure plans, and temporary local planning instruments if the State standard planning scheme provisions provide for the development to be prohibited.[41]

The *Explanatory Notes* (p 383) comment that **Sch 1** incorporates provisions currently found in other legislation which are, in effect, prohibitions. This is because they either prevent certain types of development or prevent it occurring in

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38 An 'environmentally relevant activity' is a mining activity; greenhouse gas storage activity; petroleum activity; or prescribed as such by Regulation on the basis that the activity will, or has the potential to, release contaminants into the environment and cause environmental harm: ss 18-19 of the *Environmental Protection Act 1994* (Qld).

39 Schedule 8, Part 1 is somewhat modified by s 2.5B.63 for master planned areas.

40 It has been observed that Sch 1 does not incorporate 'prohibitions' found in existing State planning regulatory provisions so it is arguable that Sch 1 does not cover all of the existing 'prohibitions': Sarah Persijn, HopgoodGanim Lawyers, 'Prohibition, the Assessment and Decision Rules and Compliance Assessment: A return to certainty and the end of certainty for planning in Queensland', *Exclusive Briefing Paper,* July 2009, p 3. The reform process aims to amalgamate into the planning legislation all of the variations to IDAS currently located in other legislation, but this will occur in stages.

41 Sarah Persijn, p 4. See cls 88(2) (d); 142, 106 of the Bill. Currently, under s 2.1.23(2) of the *IP Act*, such instruments may not prohibit development: see further, Wendy Evans, para 41.

certain areas by providing that applications relating to such development cannot be made or accepted (i.e. they are not 'properly made applications'); or by stating that certain types of applications must be refused. The Sch 1 prohibitions will be familiar to many and, broadly, relate to a range of development activities relating to a wild river area; or operational work for the clearing of native vegetation regulated by the *Vegetation Management Act*; and brothels.

If a planning instrument purports to provide for any matter about development that is prohibited development under Sch 1, that instrument is of no effect (**cl 234**).

The 'prohibited development' concept – which stops the carrying out of development listed in Sch 1 or in other relevant instruments – may overcome the situation under the *Planning and Environment Act 1994* where a rezoning application can be made to change the zoning of an area and seek, thereby, to achieve what was prohibited development in the zone.[42]

6.2 TYPES OF APPROVALS

IDAS applies regardless of whether a preliminary approval or development approval is sought. Many features of approvals under the Bill remain similar to those in the current *IP Act*.

6.2.1 Current IP Act

At present, various types of approvals can be obtained under the *IP Act*. The different types of approvals – preliminary approvals and development approvals – allow IDAS to operate flexibly across the vast range of possible development scenarios, from simple house extensions to complex, large mixed-use developments.

Development Permit

A development permit is needed (see s 3.1.5(3) of the *IP Act*) only for assessable development. If there are multiple aspects of assessable development (e.g. building work and operational work), a permit must be granted for each aspect but can be applied for via a single development application. The permit authorises the development and development cannot commence until it is granted. 'Reasonably required' conditions can be imposed.

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42 McCullough Robertson Lawyers, p 2.

Preliminary Approval (Generally)

A preliminary approval can be useful to gain conceptual approval for development that is not identifiably assessable (e.g. 'a residential precinct') which may cover a range of assessable, self-assessable or exempt development. Preliminary approvals are governed by s 3.1.5(1) of the *IP Act* and may (they are optional) be sought prior to a development permit being obtained. However, they do not authorise commencement of the development and can be subject to conditions. Once issued, the preliminary approval is legally binding. The public notification requirements of the *IP Act* apply to applications for such approval.

The more general or specific the proposal the more general or specific the preliminary approval is likely to be (e.g. an approval might only be for the *concept* of a residential use of the premises but does not authorise any specifics about its nature or scale) (see *Explanatory Notes*, p 124).

Preliminary Approval (Overriding a Planning Instrument)

This type of preliminary approval is covered by ss 3.1.6, 3.5.5A and 3.5.14A of the *IP Act*. It will override the local government planning scheme applying to the land on which it is proposed that the development occur and put in place different provisions during either the life of the preliminary approval or until the development is completed. If the variation proposed is substantially inconsistent with the underlying policy of the planning scheme or there is no clear outline of the character and form of the proposed development, it may be that the variation should not be approved.[43] Thus, some justification is needed for departure from the established policy of the planning scheme.

6.2.2 Sustainable Planning Bill

Clauses 240-245 cover the nature of the four different types of approval that can be sought under IDAS – development permit, preliminary approval, compliance permit, and a compliance certificate. There are many similarities with the current *IP Act*. By way of very brief overview, the main features of each of the approvals are outlined below (but please refer to the Bill and the Explanatory Notes, pp 123–127, for more detail).

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43 DIP, 'Development Permits and Preliminary Approvals', Implementation Note 13, p 3.

Development Permit

A development permit (**cl 243**) actually authorises assessable development to take place (as opposed to preliminary approvals that approve development but do not allow it to start) to the extent stated in the permit, subject to any conditions contained therein (see **cl 244** and the later discussion about conditions) and to any preliminary approval relating to the development. It will attach to the land the subject of the application and is legally binding on the owner, successors and occupiers, meaning that changes in ownership do not affect the validity of the approval (**cl 245**).[44]

Preliminary Approval (Generally)

Preliminary approvals (**cls 241**) are legally binding and approve development, subject to any conditions and to the extent stated therein, but they do not allow assessable development to take place. They are optional.

Preliminary Approval (Varying the Effect of a Planning Instrument)

As currently the situation under the *IP Act*, a preliminary approval can be obtained (see **cl 242**) to vary (although the *IP Act* uses the term 'override') the effect of a planning instrument on the relevant premises and substitute different provisions for the period of the preliminary approval, or up to the applicable time limit for completing the development. For instance, a preliminary approval of this type (cl 242 preliminary approval) might approve a development and state that a development is assessable development requiring code and impact assessment, and it might identify or include codes for the development. Thus, preliminary approval can bring the development potential of the land into line with the nature of the development intended (see *Explanatory Notes*, p 125).[45]

The assessment process under **cl 316** for applications for a cl 242 preliminary approval is similar to that currently under the *IP Act*. However, the decision rules (**cls 327-329**) will be somewhat extended, as will be discussed below. As is the case under the *IP Act*, the assessment is to be carried out having regard to the assessment rules that apply for assessing the development itself against the current

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44 The *Explanatory Notes* (p 127) give the example of a commercial building containing a cinema complex leased and operated by a cinema chain. The development permit contains operating conditions for the cinema which bind the owner of the building and the cinema operator. If a new operator takes over the cinema, the permit binds the new operator and the building owner must make the new operator aware of the conditions.

45 A preliminary approval is of no effect to the extent it is inconsistent with a cl 232 Regulation: cl 242(8).

planning scheme as is, not as if the variation has been made. It seems that under the new Bill, a cl 242 preliminary approval no longer 'overrides' a planning instrument but, rather, 'affects' it.[46]

6.3 ASSESSMENT MANAGERS AND REFERRAL AGENCIES

It has been observed that **cls 246-256** of the Bill provide a useful overview of the roles and jurisdictions of assessment managers and referral agencies, which may address the possible deficiencies in the *IP Act* regarding information about these important matters.[47]

The **assessment manager** is responsible for assessing the application with input by the referral agencies. **Clauses 246-249** deal with identifying the assessment manager (usually prescribed by Regulation and it will generally be the relevant local government); the assessment manager's role to decide all or part of an application (the responsibility for assessing different aspects of the application may rest with different entities); and the jurisdiction of a local government as an assessment manager where the development is not entirely within the local government's planning scheme area.

The *Explanatory Notes* (pp 128-129) provide an example of where the jurisdiction for assessing various aspects of an application may lie with more than one entity. An application may involve several industrial activities, some of which are assessable under the local government planning scheme and some of which are exempt under the scheme, one of which may be an 'environmentally relevant activity' under the *Environmental Protection Regulation 2008*.[48] In such a case, the local government would be the assessment manager on account of some of the development being assessable under the planning scheme but the Department of Environment and Resource Management (DERM) will be a concurrence agency regarding the environmentally relevant activity and able to set conditions to be included in the final development permit.[49]

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46 Wendy Evans, para 45.

47 Wendy Evans, para 46. Under the *IP Act*, the provisions concerning assessment managers and referral agencies are found under ss 3.1.7, 3.1.7A, 3.1.8 and *IP Regulation 1998*, Sch 2.

48 Making it assessable development under the Regulation to the Bill.

49 It is also made clear in cl 249 that if the assessment manager could also have been a concurrence agency, the entity is then the assessment manager for those aspects in respect of which it would be a concurrence agency.

Clauses 250-255 deal with identifying a **referral agency** which can be either an '**advice agency**' or a '**concurrence agency**'. Both types will generally be prescribed by Regulation but can be the entity in relation to which the application has been devolved or delegated.[50] The provisions also establish the jurisdiction of referral agencies (again prescribed under a Regulation); and allow the Minister to determine that an entity that could have been an assessment manager for an application is a concurrence agency instead (see *Explanatory Notes*, pp 130-131). In essence, a **concurrence agency** can substantially direct the outcome of an application, but an **advice agency** can only give advice to the assessment manager about assessing and deciding the application.

It is also intended (**cl 256**) to put beyond doubt that an assessment manager or a concurrence agency can seek advice or comment about an application from any person (e.g. officers in a government agency or neighbouring landowners to a proposed development) so long as it does not extend any stage of the IDAS process. This will not apply to the compliance stage of IDAS.

6.4 STAGES OF IDAS

The application; information and referral; notification; and decision stages remain the same as under the *IP Act* but a compliance stage has been added. As currently the case, not all stages, or parts thereof, will apply to all applications. Further, development requiring only compliance assessment faces just the compliance stage (**cl 257)**.[51]

6.4.1 Application Stage

Current IP Act

Stage 1 of IDAS (Ch 3, Part 2 of the *IP Act*) concerns making and lodging the development application in the approved form, accompanied by the relevant fee, and the consent of the owner (for certain types of development) with the assessment manager. The assessment manager is usually the local government (s 3.1.7, but see also Sch 8A). Only a 'properly made application' can be received (see s 3.2.1(7)).

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50 Clause 253 excludes certain entities as referral agencies for development in declared master planned areas.

51 Some of the Bill's provisions and other legislation do not apply to the making of development applications in declared master planned areas where a structure plan exists (cl 258).

The assessment manager will generally then confirm that the application has been received by way of an acknowledgement notice sent within 10 business days of the lodging of a 'properly made application' (s 3.2.3(1)).

Sustainable Planning Bill

Chapter 6, **Part 2** (**cls 260-269)** of the Bill covers the application stage of IDAS. It is an aim of the Bill that the bar will be raised on the quality of applications that can be accepted which will reduce the time spent on information requests.[52] Currently, s 3.2.1(9) provides the assessment manager with a degree of discretion to accept an application even if it is not 'properly made'. In the past, there has been a view taken by local governments that many applications are poor and lack sufficient detail.[53]

Clauses 260-265 set out the application requirements. Applications must be in the approved form or made electronically using e-IDAS, where an assessment manager has adopted the system. **Clause 262** governs e-IDAS applications and communications and it provides for contingencies if the system fails in order to avoid adverse consequences (e.g. missing a time limit for an action).[54]

Clause 260 establishes the other requirements for applications. Each application must be accompanied by:

- the relevant fee,
- mandatory supporting information that the approved form states is mandatory (e.g. a written statement of works; plans showing the location of the proposed works);
- the written consent of the owner of the land the subject of the application, if required under **cl 263**;[55] and
- any supporting evidence set out in **cl 264** regarding developments involving a prescribed State resource (yet to be prescribed under the new Regulation).

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52 'Proposed changes to planning and development in Queensland – Summary of Changes', p 3.

53 David Nicholls, p 6.

54 At any stage of the process, an entity might be required to give another entity a written notice about an application and it may do so using e-IDAS (cl 259).

55 For an application for a material change of use of premises or reconfiguring a lot; or work on land below high-water and outside a canal; or work on rail corridor land (cl 263). However, cl 263(2) provides exceptions where the land subject of the application has the benefit of an easement.

These requirements must be complied with for an application to be a 'properly made application' but if the application relates to land in a declared master planned area, the master plan must have been approved, or the master plan application made with or before the making of the development application (**cl 261**).[56]

Clauses 266-268 concern notices about applications being received. In cases where an application is *not* properly made, the assessment manager must notify the applicant of that fact within 10 business days, the reasons why it is not properly made and what the applicant should do to fix up the application to comply with the requirements. There is no longer a discretion which enables certain applications that have not been properly made to still be accepted. When received, the applicant has 20 business days (unless extended by agreement) to take the necessary action or else the application lapses and the fee is refunded, less a reasonable fee for processing. The *Explanatory Notes* (p 137) observe that consultation during the review process indicated strong support for a more rigorous requirement for 'properly made applications' and for applicants to make sure their applications are well conceptualised at the outset, rather than the current situation where they can further conceptualise the development during the first two IDAS stages.

However, in the case of a '*properly made application*' the assessment manager gives the applicant an **acknowledgment notice** within 10 business days after receipt of the application, except in specified cases (which is similar to the current *IP Act* exceptions where the development requires just code assessment; and there are no referral agencies or all have stated they do not require referral of the application to them) (**cl 267**).

The acknowledgment notice must contain the detail set out in **cl 268**. It acts as a means of confirming understanding about the type of approval (preliminary approval and/or development approval) and aspects of development being applied for (e.g. carrying out building work; operational work); whether code assessment or impact assessment is required and the requirements of such assessments; as well as confirming the referral agencies and whether they are 'concurrence' or 'advice' agencies. If the assessment manager does not intend to make an information request, this must be stated. The notice must also tell the applicant that the applicant is responsible for referring the application and specified material to referral agencies or else it will lapse.

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[56] See also cl 265 which will apply if, at the time of the application, the structure or works the subject of the application cannot be used unless a development permit exists for material change of use of premises for which the structure is, or works are, proposed and approval for the material change of use has not been applied for. In this situation, the development application is taken to also be for the change of use. Clause 265 seeks to avoid the scenario of work being approved and carried out (e.g. erecting a building) without the use of the building having been approved: see *Explanatory Notes*, pp 136-137.

It has been observed by some planning law experts that the emphasis on 'properly made applications' mean that applicants need to ensure that their applications for development are well made and meet the mandatory requirements as well as making sure they become familiar with the shorter timeframes.[57]

6.4.2 Information and Referral Stage

Current IP Act

The information and referral stage of IDAS is dealt with in Ch 3, Part 3 of the *IP Act*. The applicant must give each referral agency a copy of the application and other specified material (s 3.3.3). The applicant may be asked, via an information request, to provide additional information to help decide the application (s 3.3.6).

Sustainable Planning Bill

Part 3 of **Ch 6** of the Bill (**cls 270-293**) deals with the information and referral stage of IDAS. Although it will have similarities with the information and referral stage under the *IP Act*, the Bill seeks to impose some new requirements, examples being some shorter timeframes and a limited opportunity to revive lapsed applications. When the application stage ends (see **cl 269**) the information and referral stage begins.

The purpose of this stage is, as currently the case, to give the assessment manager and concurrence agencies the chance to ask the applicant for further information needed to assess the application; give concurrence agencies the opportunity to exercise their powers; and to give assessment managers the chance to receive advice about the application from referral agencies. The IDAS process ensures that, although referral agencies operate within the limits of their jurisdictions, they do so within the context of the overall application and assessment process rather than each of them working in a vacuum (*Explanatory Notes*, p 141).

Note, however, **cl 271** enables referral agencies to provide a response on a matter within their jurisdiction about a development before an application is even made which might assist a potential applicant in knowing an agency's position before formally making an application. If a referral agency provides such a response, it can charge a fee for doing so.

6.4.2.1.1 Referral

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[57] B McCredie, R Meurling & A Vella.

As the *Explanatory Notes* (p 140) point out, referral agencies and the jurisdiction of each will be identified in the Regulation. Referral to a referral agency is required only if the application activates the referral 'trigger' which will also be set out in the Regulation. For instance, an application to carry on building work on a heritage place under the *Queensland Heritage Act 1992* may trigger referral to DERM which will assess the matter relating to its jurisdiction – i.e. conservation of Queensland's cultural heritage.

As noted above (and see **cl 272**), applicants have the responsibility of (except in certain circumstances discussed earlier) giving a copy of the application and specified material, and the agency's application fee to each referral agency within 20 business days (rather than the current 3 months under the *IP Act*) of receiving an acknowledgment notice. A longer time can be agreed upon. As will be discussed later in this Brief, the Bill provides a new mechanism for the application to go to a 'missed' referral agency when it is realised that referral has not occurred under cl 272.

An application will lapse if the applicant does not provide the application and material to each referral agency within the aforementioned timeframe. This intended provision (**cl 273**) seeks to ensure greater timeliness of actions within the IDAS process but, as the *Explanatory Notes* (p 142) observe, this needs to be balanced against minimising the occurrence of 'accidental' lapses due to administrative oversights. A further safeguard is that the acknowledgment notices given to the applicant must contain information about when an application will lapse.

Provision is made in **cl 274** for the 'revival' of an application if, within 5 business days after the application would have otherwise lapsed, the applicant gives the assessment manager written notice that the applicant seeks to revive it. The *Explanatory Notes* (p 142) state that revival should occur only where the proper and timely assessment of the application is not affected by the inaction. The applicant must then give the required material to the referral agencies before the end of 5 business days after the application is revived or of the further agreed period. The application cannot be again revived if these new time limits are not met by the applicant.

6.4.2.1.2 Information Requests

Written information requests to the applicant by the assessment manager and concurrence agencies help them in assessing the application. These are provided for in **cls 276-281**. The request can also include advice about how the applicant can change the application. The timeframe for giving the information request is usually within 10 business days of giving the acknowledgement notice (for the assessment manager) or of the receiving the application and other referral material (for the concurrence agency). The time can be extended once without the applicant's

agreement or further still if the applicant agrees. For a concurrence agency, the request period is part of the overall assessment period by the agency. However, the agency's assessment period will not include any extensions it has for giving an information request or the time waiting for a response (**cl 283**).

The applicant must respond to the information request by providing the information asked for or giving a written notice stating the applicant does not intend to supply the information and asking for the assessment to proceed (**cl 278**).[58]

The applicant must comply with the information request within the specified timeframe (generally within 6 months of receiving it), unless an extension of time is given, or the application lapses. Under the *IP Act*, the applicant has 12 months within which to respond. Similarly to the situation regarding lapsing for non-provision of the application material, a lapsed application for not complying with the information request can be revived by giving the assessment manager and the relevant concurrence agency notice of an intention to revive it within 5 business days after the application would have otherwise lapsed. The applicant has 5 business days (or further agreed period) within which to comply with the information request or else the application will lapse entirely.

6.4.2.1.3 Referral Agency Assessment and Powers

Clauses 282-293 relate to the referral agency assessment process and its response powers. It is intended that the Bill will clarify the assessment process, particularly in terms of what the assessment must be against and what must be had regard to.[59]

Each referral agency assesses the application, as relevant to the jurisdiction of each agency, *against* the State planning regulatory provisions applied by the agency; the regional plan (e.g. the SEQ Regional Plan if the development is in SE Queensland) to the extent it is not identified as being appropriately reflected in the planning scheme; the applicable concurrence agency IDAS codes identified in legislation; SPPs applied by the agency (to the extent they are not identified as being appropriately reflected in a relevant regional plan or planning scheme); and applicable laws and policies (**cl 282(1)**).

To ensure that referral agencies *have regard to* the broader local and State planning context, each referral agency must (**cl 282(2)**), within the limits of its jurisdiction, have regard to the State planning regulatory provisions not applied by the agency;

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[58] The applicant must also provide a copy of the information to the assessment manager if the request has been made by a concurrence agency so that the assessment manager has all the information on hand for the public to be able to inspect and purchase (see cl 278; *Explanatory Notes*, p 144).

[59] Wendy Evans, para 50(5).

SPPs not applied by the agency (that are not identified as being appropriately reflected in a relevant regional plan or planning scheme); the structure plan and master plan for any declared master planned area; a temporary local planning instrument; the planning scheme; and any relevant designation of the land if the relevant land is designated land. Appropriate weight can also be given to any planning instruments, laws, policies or codes of the type mentioned in cl 282(1) and (2) coming into effect after the application was made but before the agencies' referral day (see also **cl 282(3)(b)** relating to building work).

Referral agencies then have a timeframe, including the information request period but not the period while the agency is waiting for a response, within which to respond to the assessment manager with their requirements and/or advice about the application. It is normally 30 business days but it can be a shorter prescribed timeframe as some referrals will only need technical code assessments which take a shorter time than referrals needing broad assessments (see *Explanatory Notes*, p 146; **cl 283**). The assessment period can be extended once without the applicant's agreement and further extended with the applicant's agreement (**cl 284**).

If a referral agency does not comply with the requisite timeframe, the assessment manager will decide the application on the basis that the agency had no requirements (to ensure timeliness of response) although provision is made for late responses (**cl 286**, **cl 290**).[60]

A concurrence agency has the power to tell the assessment manager about matters set out in **cl 287** (e.g. the conditions to attach to a development approval; to approve just part of the development; that preliminary approval rather than development approval be given; a different period for lapsing of the approval if the development is not started; to refuse the application if its power is not limited by cl 288;[61] or that it has no requirements relating to the application). It cannot direct approval be given because this is up to the assessment manager.[62] Reasons may have to be given to the applicant in certain circumstances under **cl 289**.

Clause 290 enables a concurrence agency to change or delay a response before the application is decided by the assessment manager. According to the *Explanatory*

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60 Clause 286(2) concerns deemed refusals by local governments as concurrence agencies for certain building development applications.

61 Clause 288 deals with limitations on power to refuse developments on designated land; and where a local government exercises concurrence jurisdiction about amenity and aesthetics of a building.

62 Clause 287(5) applies to the concurrence agency's response for the part of an application for preliminary approval to vary the effect of a local planning instrument for the land (e.g. to refuse variations sought). This power is now made express under the Bill.

Notes (p 149), this allows for changing needs and circumstances. For instance, under IDAS, applicants can ask for the decision time to stop in order for the applicant to make representations which could result in a meaningful outcome. Even if the time for giving a response has expired but the application is not yet decided, cl 290 is a means for the agency to change its response.

Advice agencies responses are dealt with by **cls 291-292**, their powers being limited to giving advice and recommendations only (e.g. about conditions to be imposed; refuse the application).

6.4.2.1.4 Missed Referral Agencies

Missing a referral agency is not unusual and is often only discovered during, or sometimes even after, the IDAS process. The Bill, in **Chapter 6**, **Part 7,** introduces a new process for being able to identify and 'pick up' missed referrals (e.g. the application is referred to DERM's coastal protection division but it should also have been sent to its contaminated lands division). The DIP notes that the intention of the new provisions is to enable missed referral agencies to exercise their referral powers without significantly delaying the IDAS process.[63] Currently, under the *IP Act*, a change to an application to include a missed referral agency requires the IDAS process to stop and it only starts again from the beginning of the acknowledgement period. Missing a referral often causes an application to lapse.

The new provisions will not require the entire application to go back to the earlier acknowledgement stage – the missed referral will be able to 'catch up' while the rest of the IDAS process continues up until the decision stage. Under **cl 357**, any party to the application (not just the applicant) can identify the missed referral and give notice to all other parties about it. There cannot be a decision until the missed referral agency has had a chance to assess the application. Relevant timeframes are set out in **cls 358-359**. The application does not lapse. The public notification stage need not be repeated if it has already been started or carried out (see **cls 357-359**; *Explanatory Notes*, pp 188-189).

The *Explanatory Notes* (p 190) point out that if the missed referral is found only after the decision has been made, there is no ability to include the missed referral. If the development application is on appeal before the Court when the missed referral is identified, the Court can order the applicant to deal with the missed referral before the Court hears and determines the matter.

6.4.2.1.5 Changing or Withdrawing Development Applications

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63 'Proposed changes to planning and development in Queensland – Summary of Changes', p 3.

Chapter 6, **Part 6** sets out, according to the *Explanatory Notes* (pp 184-185), a simpler, clearer and more flexible process for changing applications than s 3.2.9 of the *IP Act* presently provides.

The new process under **cls 350-353** intends to cover a broader category of *minor changes* (currently the category is quite narrow and allows only changes such as correcting a mistake about a name or address of an applicant). A 'minor change' under **cl 350** will also encompass a change that does not result in a substantially different development;[64] and does not require the application to be referred to more agencies; and does not change the type of approval sought; and does not now involve impact assessment if it did not do so before. Such a minor change can be requested by the applicant without having to stop the IDAS process.

Secondly, this Part also allows for *changes to be made in response to submissions or information requests* during or after the notification stage (discussed below) without significantly delaying the IDAS process. In such a case, IDAS does not stop but the notification stage must restart or be repeated, unless the assessment manager is satisfied the change would not be likely to attract an objection to the thing comprising the change, if notification were to apply to the change (see **cl 354**). It has been suggested that, on the basis of some Court judgements, it will be difficult to challenge the assessment manager's 'satisfaction' or lack thereof.[65]

Finally, **cl 355** will allow for and set out a single process for making all *other changes not previously mentioned*. Those are where the change is not minor and not in response to a submission or information request. In this situation, the IDAS process stops on the day the notice of the change is received by the assessment manager and restarts from the commencement of the acknowledgment period. The notification stage may also have to be repeated unless the assessment manager is satisfied that change would not be likely to attract an objection to the thing comprising the change, if notification were to apply to the change.[66]

6.4.3 Notification Stage

The notification stage enables members of the public to make submissions, including objections, to applications. Making a submission also secures the right to

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64 An example of a substantially different development might be an application for a material change of use for a cinema to include a residential component.

65 Susan Malone, HopgoodGanim Lawyers, 'Changes to Changes: New rules for changing applications and approvals', *Exclusive Briefing Paper*, July 2009, p 5.

66 Clause 356 allows applications to be withdrawn before being decided.

appeal the assessment manager's decision on the application to the Planning and Environment Court.

Current IP Act

The public notification stage of IDAS is currently covered by Ch 3, Part 4 of the *IP Act*. This third IDAS stage enables the community to make submissions about applications for 'impact assessable development' and applications for preliminary approval overriding a local planning instrument. 'Code assessable' applications do not need to be publicly notified. Various notification actions are specified. At this point the community has a chance to comment on, or object to, a proposal and the submissions are considered by the assessment manager in deciding an application; and to secure appeal rights. Comments and objections are made by written submissions within 15 business days from the last notification action taken by the applicant.

Sustainable Planning Bill

Chapter 6, **Part 4 (cls 294-307**) deals with the formal public notification stage undertaken by the applicant.[67] This stage applies, as is the case under the *IP Act*, to an application where any part of it requires assessment of the environmental effects of the development (impact assessment), even if code assessment is required for another part. It will also apply to applications for a cl 242 preliminary approval varying the effect of a local planning instrument for the relevant land (unless **cl 295(3)** applies because a cl 242 preliminary approval has previously been given).[68] Public notification will still be needed even if a concurrence agency directs the assessment manager to refuse the application to ensure that full public scrutiny is available (as the *Explanatory Notes* (p 152) point out, the ground for refusal offered by the concurrence agency might be a technical one only). [69]

The public notification requirements (see **cls 297-299**) are similarly prescriptive as those under the current IDAS and include placing a public notice in the local newspaper and placing a notice on the land relating to the application. For the purposes of giving notice to owners of all adjoining land, specific definitions are set out regarding what is and is not 'adjoining land' and who is the 'owner' of such

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67 Although it can also be carried out by the assessment manager (see cl 279).

68 The notification requirements under this Part do not apply to aquaculture development applications under Ch 9, Part 7 which imposes different requirements for those applications.

69 It may be that cl 298 could expand the categories of development subject to public notification apart from those set out in cl 295: see Charlotte Gill, 'Sustainable Planning Bill – Assessment of Development and IDAS (Part 2)', *Corrs in Brief*, July 2009, p 1.

land, attempting to overcome difficulties that may arise in complex titling situations. All relevant notification actions must be completed within 5 business days after the first of the actions is carried out.[70] Note, however that a Regulation can prescribe different notification requirements for applications for development on land outside a local government area or in an area where compliance with the normal requirements would be unduly onerous or would not give effective public notice.

The notification period is generally at least 15 business days but will be at least 30 business days in specified circumstances set out in cl 298(1)(a).

The applicant must give the assessment manager written notice, within 20 business days after the notification period ends, that the notification requirements have been complied with (**cl 301**). This timeframe is down from 3 months under the current *IP Act* to enable the application to be finalised more quickly. The *Explanatory Notes* (p 154) comment that the current 3 month period is '*excessive, given that this is a simple procedural step*'. Further, the application will lapse – subject to the new ability to revive it in specified circumstances – for failure to comply with the notification actions before the end of 20 business days after the applicant was entitled to start notification stage (**cl 302**) or for not giving notice to the assessment manager under cl 301 about the requirements having been carried out (unless, in either case, an extension has been agreed to). A lapsed application is revived under **cl 303** by giving the relevant notice to the assessment manager within 5 business days after the application would have lapsed and then, within 10 business days, the applicant must carry out the necessary notification actions (see **cls 302-303**).

However, even if there has not been full compliance with the notification requirements (e.g. a minor technical error), the assessment manager has the discretion to decide the application where it is considered that the non-compliance has not adversely affected public awareness of the application; or restricted the opportunity for public submissions (**cl 304**).

Properly made submissions are to be accepted by the assessment manager during the notification period (**cl 305**). While submissions that have not been properly made can also be accepted, no rights of appeal flow to the submitter. Submissions can be carried over for applications that are re-notified for some reason (**cl 306**).

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70 A new requirement introduced by the Bill obliges the applicant to give written notice, within 5 business days after the day of the last of the cl 297(1) actions, to the assessment manager of the day the last of the actions was carried out (cl 300).

6.4.4 Decision Stage

As with the first 3 stages of IDAS under the Bill, the assessment and decision making stage relating to applications for approval does not apply to development requiring compliance assessment. Development requiring compliance assessment has its own self-contained stage and is dealt with later in this Brief. For such developments, compliance assessment is the only stage of IDAS that applies.

Current IP Act

Chapter 3, Part 5 of the *IP Act* covers the making of a decision by the assessment manager.

'Assessable development' can be either 'code' and/or 'impact' assessable (s 3.1.3):

- *code assessable* – the application is only assessed against an 'applicable code' and if it complies with the code, the application must be approved. The application may also be approved in certain circumstances even if it does not comply (s 3.5.13); and/or
- *impact assessable* – the application is assessed more broadly for the environmental effects of the development, having regard to a number of matters. These types of applications must be publicly notified and adjoining landowners must also be informed (s 3.5.14).

The applicant and submitters are advised of the decision along with being provided with the information specified in s 3.5.15 of the *IP Act*.

Sustainable Planning Bill

Chapter 6, **Part 5 (cls 308-349**) of the Bill deals with the assessment and decision stage (beginning the day after all other applicable stages, other than the compliance stage, have ended) for the development application (**cl 309**) and makes some changes to the current decision stage under the *IP Act*. However, the application can begin being assessed before the decision stage formally begins. This stage will apply even if a concurrence agency requires the application to be refused (**cls 308-309**).[71]

6.4.4.1.1 Assessment Process – Code Assessment and Impact Assessment

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[71] Note cl 310 which enables the decision stage to be stopped until procedural rights etc. to native title parties under the Commonwealth *Native Title Act 1993* have been determined.

The assessment process is dealt with in **cls 311-317**.[72]

If a development requires **code assessment**, **cl 313** applies, although an application can be subject to both code and impact assessment. Under the *IP Act*, code assessment was originally intended to be limited to assessment of applications against applicable codes only. However, additional instruments have since been introduced that must also be considered in the assessment. As the *Explanatory Notes* (pp 159-160) point out, the effect of the other instruments is not always apparent as they are found throughout the *IP Act*. The Bill now consolidates the effect of all of the instruments into cl 313.

The assessment manager must assess the part of the application needing code assessment *against* the criteria listed in **cl 313(2)**. Those are:

- State planning regulatory provisions;
- the regional plan for the designated region to the extent it is not identified as being appropriately reflected in the planning scheme;
- applicable IDAS codes, other than concurrence agency codes the assessment manager does not apply;
- SPPs not identified as being appropriately reflected in the planning scheme or regional plan;
- applicable codes contained in the instruments in cl 313(2)(e) (i.e. a structure plan or a master plan, a temporary local planning instrument, a cl 242 preliminary approval, a planning scheme);[73] and
- a priority infrastructure plan, if the assessment manager is an infrastructure provider.

The higher instruments prevail over those lower in the list if there is any inconsistency, apart from the applicable IDAS codes where the effect of such is determined by the instrument or legislation in which they are found (see *Explanatory Notes*, p 160).

In addition to the aforementioned criteria, the assessment manager *must also have regard to* (**cl 313(3)**) the common material (that has been received during the previous stages of IDAS, including concurrence agency requirements, advice, public submissions etc.); any development approval for, and lawful use of, the premises or adjacent premises; any referral agency's response; and the purposes of any instrument containing an applicable code.

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[72] See cl 312 which prevents the assessment manager from assessing the 'coordinated part' of an application.

[73] The *Explanatory Notes*, p 160, note that the assessment manager's code assessment is still 'bounded' in that it does not enable him or her to consider the whole of the instrument (e.g. the whole of the structure or master plan etc.).

Further, no other matter than those under cl 313 can be considered in the assessment, thus emphasising that code assessment is still 'bounded' (cl 313(5)).

Impact assessment is dealt with under **cl 314**. Again, the criteria *against* which the application is assessed against are listed (usually in order of hierarchy but see the discussion above about exceptions to this rule) in **cl 314(2)**:

- State planning regulatory provisions;
- the regional plan for the designated region not identified as being appropriately reflected in the planning scheme;
- relevant laws administered, and identifiable policies applied, by the assessment manager (where the assessment manager is not a local government);
- SPPs not identified as being appropriately reflected in the planning scheme or regional plan;
- the instruments listed in cl 314(2)(e) to (j).[74] For impact assessment, the application is assessed against the *actual listed instruments* rather than just being bounded by the *applicable codes in them*; and
- a priority infrastructure plan if the assessment manager is an infrastructure provider.

The matters to which the assessment manager *must have regard* in assessing the application are contained in **cl 314(3)** and are similar to those found in cl 313(3).

Provision is made in **cl 315** for assessment of an application against a **superseded planning scheme** instead of against the existing planning scheme when the application was made. The ability to request that a superseded planning scheme be applied may be useful if the new planning scheme contains a prohibition on certain types of development. This is because such development would now become 'prohibited development' which, under the Bill, can no longer be carried out.

6.4.4.1.2 Assessment for Preliminary Approval

Clause 316 applies to an application for preliminary approval that seeks to vary the effect of a local planning instrument (a **cl 242 preliminary approval**). Code and/or impact assessment under cls 313 and 314 apply to those parts of the application requiring code or impact assessment and cl 316(4) applies to part of the application seeking to vary the effect of a local planning instrument.

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[74] As the *Explanatory Notes* (p 162) note, in code assessment, there is no special provision for developments outside a planning scheme area whereas the impact assessment provisions address this situation in cl 314(2)(j) – the application must be assessed against any planning scheme or temporary local planning instrument for a planning scheme area that may be materially affected by the development.

In assessing that part of the application seeking variation of the effect of the local planning instrument, the matters the assessment manager must have regard are similar to those currently found in the *IP Act* applying to preliminary approvals overriding a local planning instrument. They are (**cl 316(4)**):

- the common material; and
- the result of the assessment of those parts of the application requiring code or impact assessment; and
- to the extent relevant –
  - State planning regulatory provisions;
  - the regional plan to the extent it is not identified as being appropriately reflected in the planning scheme,
  - SPPs to the extent not identified as being appropriately reflected in the regional plan or planning scheme;
  - a structure and master plan; and
- the consistency of the proposed variations with the rest of the existing aspects of the planning instrument not sought to be varied; and
- the effect of the proposed variations on potential future submitters' rights; and
- any referral agency's response for the application.

It is now made clearer that the proposed development must be assessed under the cls 313 and 314 code or impact assessment rules *before* the assessment for the part of the application seeking to vary the effect of the planning scheme occurs. This is to ensure that the assessment of the proposed development is carried out against the planning instruments as they currently stand before the development can be assessed against the planning instruments as they are proposed to be varied (see *Explanatory Notes*, p 163).

Clause 311 underpins the basic premise of IDAS that applications are to be assessed against planning instruments codes, laws and policies in effect at the time the application was properly made. However, **cl 317** allows appropriate weight to also be given to planning instruments codes, laws and policies that come into effect after the making of the application but before the decision stage is started.

6.4.4.1.3 Decision

The assessment manager usually has 20 business days to decide the application once the decision stage begins (**cl 318**). As with the earlier stages, the decision period can be extended once without the applicant's agreement and further with the applicant's agreement, unless the Minister has directed the application to be decided within the normal 20 days (see later discussion about Ministerial IDAS powers). However, where a concurrence agency is involved, the decision must not be made before 10 business days after the information and referral stage ends. This will allow the applicant to make representations to the referral agency before the

decision is made (**cl 320**) or to request the assistance of the chief executive of DIP to resolve inconsistent agency responses (**cl 321**), unless the applicant does not intend to act under cls 320-321 to stop the decision making period.

Note that **cl 319** provides for 'changed circumstances' situations where the decision making period can start again, ensuring that the final response is before the assessment manager before the application is decided.[75]

Clauses 323-326 lay down the **decision making rules** for applications other than for a cl 242 preliminary approval. All or part of the application can be approved with or without conditions. The application can also be refused. The assessment manager's decision must be based on the above code and/or impact assessments and must not be inconsistent with a State planning regulatory provision. If a required application for master plan for the development is refused (if in a master planned area), the development application must also be refused.

To remove any doubt, cl 324(6) declares that the assessment manager can give a preliminary approval (but not a cl 242 preliminary approval) even if the application was for a development permit. This latter provision may be useful, for example, if there is sufficient information to approve the overall concept of a lot reconfiguration to create lots for a housing estate but insufficient information to enable a permit to be given authorising the reconfiguration. A preliminary approval is binding and may be preferred over asking the applicant for more detail during the information request stage. A preliminary approval is given for the aspects that are 'suitable' and a further application is needed to deal with aspects not finalised by the preliminary approval to gain a permit to commence work (see *Explanatory Notes*, pp 167-168).

If a concurrence agency requires the imposition of conditions, those conditions must be attached to the approval (**cl 325(1)**,**(4)**). If the concurrence agency requires that the application be refused, the application must be refused (see also, **cl 325(2)**, **(3)** which is about a concurrence agency requiring that only a preliminary approval or part approval be given or that a different period for the duration of the approval be applied to the permit).

The *Explanatory Notes* (pp 169-170) observe that code assessment was originally meant to be 'bounded assessment' against only applicable codes. However, numerous amendments to the *IP Act* have introduced more and more considerations into code assessment so that there is often not much difference between code and

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[75] See cl 290 (amended or late response by concurrence agency after the end of the assessment period); cl 320 (applicant makes representations to the referral agency and can 'stop the clock' for up to 3 months); and cl 321 (seeking intervention DIP's chief executive to resolve a conflict and can 'stop the clock' for up to 3 months). Clause 322 suspends decision making where a master plan needs to be approved.

impact assessment. It has also been found that code assessment is used for broader planning assessments than the originally intended 'technical' assessments where applications are meant to be approved if they comply with applicable codes.

Code assessment currently includes assessment against State regulatory planning provisions, regional plans and SPPs. Further, State regulatory planning provisions, regional plans currently prevail over codes in event of conflict, as can structure and master plans. Problems have also arisen regarding when compliance with relevant instruments and codes should be departed from.

The decision rules in the Bill aim to address these issues including by putting code and impact assessment decision and departure rules into a single set of rules in cl 326.

Clause 326 provides that the decision must not conflict with a 'relevant instrument' unless certain circumstances exist. A 'relevant instrument' is defined in cl 326(2) as basically a matter or thing listed in the assessment provisions in cls 313(2) and 314(2), other than a State planning regulatory provision, against which code assessment or impact assessment is carried out.

The decision must not conflict with a relevant instrument *unless* the specified circumstances in cl 326(1)(a)-(c) apply (to indicate that departure is to be exceptional and to accommodate conflicts between and within instruments). The only circumstances which allow conflict with a relevant instrument are:

- the conflict is necessary to ensure the decision complies with a State planning regulatory provision; or
- there are sufficient grounds to justify the decision despite the conflict;[76] or
- the conflict arises due to a conflict between 2 or more instruments of the same type or between 2 or more aspects of any one instrument and the decision best achieves the purpose of the instruments or instrument (as the case may be).

The requirement to approve complying applications for code assessment has been omitted but, as the *Explanatory Notes* point out, the new concept of 'compliance assessment' (see later) enables true bounded 'technical' assessment where the application cannot be refused.

A decision on a part of an application for a cl 242 preliminary approval that seeks to vary the effect of a planning scheme is governed by **cls 327-329**. The decision must be based on the assessments made under cls 313, 314 and 316. The assessment manager must approve all or some of the variations sought; or approve different variations, subject to cl 242(3), (5); or refuse the variations sought. The

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[76] The Minister may make a guideline about was constitutes 'sufficient grounds', pursuant to cl 759.

decision cannot conflict with a State planning regulatory provision. **Clause 328** provides that the assessment manager must take any action stated in a concurrence agency's response and also, must refuse the variations if the agency requires this. **Clause 329** sets out similar decision rules as those in cl 326, discussed above.

6.4.4.1.4 Decision Notices

The requirements of and timeframe for giving written decision notices are set out in **cls 334-338**. A written decision notice in the approved form must be given to the applicant, each referral agency and other parties in cl 334(1)(c) and (d) within 5 business days after the day the decision is made. The content of the notice is specified under **cl 335** and, in effect, is intended to be enough to enable the applicant, referral agencies and submitters to understand the effect of the decision (e.g. that it is subject to conditions and what they are and whether it was the assessment manager or a referral agency that required them). If the application is refused, the notice should state whether it was directed to be refused by a specific concurrence agency or for any other specified reasons. It must also contain the information stated in paras (g) to (n), as are relevant to the decision and also state the appeal rights for the applicant and any submitters.[77]

Some applications for building work are regulated under the building assessment provisions of the *Building Act 1975* (Qld). The building assessment provisions are, pursuant to s 30 of that Act, defined to include Chapters 3 and 4 of the *Building Act*; the Building Code of Australia, the fire safety standard in (and some other parts of) the Queensland Development Code. Section 31 of the *Building Act* provides that the building assessment provisions are codes for carrying out the assessment under IDAS and for self-assessable building work. Some building work can be made exempt development under regulations. Under the *Building Act* (Ch 4, Part 6) private licensed building certifiers can issue building development approvals for the work covered by the *Building Act*. Where the decision notice is given by a private certifier, the above requirements also apply, subject to the *Building Act*.

The conditions that can be imposed on development approvals (by the assessment manager as decided by the assessment manager, or at the direction of a concurrence agency, or under direction of a Minister) on the development or use of premises are dealt with in **cls 344-348**. They must be relevant and not an unreasonable imposition; or must be reasonably required conditions. Conditions that cannot be imposed are specified in **cl 347** (e.g. requiring monetary contributions for community infrastructure other than as provided for in the Bill). Examples of

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[77] Clause 336 sets out the material needed to be given with decision notice (e.g. appeal provisions). A copy of the notice must also be given to each principal submitter within the specified timeframes in cl 337.

conditions that may be imposed are conditions about the start and completion times for a development or compliance with an infrastructure agreement.

6.4.4.1.5 Deemed Decisions for Certain Code Assessable Applications

Clauses 330-333 of the Bill allow for a 'deemed decision' in relation to an application requiring code assessment only. Applications requiring both code and impact assessment will not fall under the deemed approval provisions. However, even some code assessable applications *will not* fall under the deemed approval provisions. Those are (**cl 330**):

- applications for a cl 242 preliminary approval;
- applications where a concurrence agency has directed a refusal or only part approval;
- vegetation clearing applications under the *Vegetation Management Act 1999*;
- building development applications;
- development applications in a wet tropics area; or in a wild river area; or on a Queensland heritage place; or in a protected area, critical habitat or area of major interest under the *Nature Conservation Act 1992*;
- applications for certain aquaculture development (to which Ch 9, Part 7 apply);
- applications relating to 'iconic places' under the *Iconic Queensland Places Act 2008*.

As the *Explanatory Notes* (p 173) point out, the deemed approval is not automatic. It has to be 'activated' by the applicant. If the assessment manager does not decide the application within the decision making period (including any extensions) the applicant may, before the application is decided, give written notice, in the approved form, to the assessment manager that the application should be deemed to have been approved. Copies of the deemed approval notice must be given to entities who would be entitled to copies of the decision notice, e.g. referral agencies. The application is then deemed to have been approved on the day the deemed approval notice is received by the assessment manager (**cl 331(1)-(5)**). Limitations on the applicant giving a deemed approval notice are imposed by **cl 333**.

The assessment manager is then required (**cl 331(6)**) to issue a decision notice within 10 business days of receiving the deemed approval notice. This is a chance for the assessment manager to impose conditions on the deemed approval. If no action is taken still, the standard conditions made by the Minister under cl 332 will apply to the deemed approval and are taken to have been imposed by the assessment manager. The standard conditions are made by the Minister following the process under **cl 332**. It should be noted that if a concurrence agency has imposed requirements on the approval, such as conditions, those concurrence agency requirements or conditions will apply to the deemed approval as well as the

standard conditions. In addition, cl 244 lists how other conditions can be imposed on approvals (e.g. as directed by the Minister or imposed by another Act).

What the approval is deemed to be for will depend upon what the applicant applied for. For instance, if the application is for a development permit, the deemed approval is for a development permit (unless a concurrence agency has directed that only a preliminary approval be given) (see **cl 331(7)**, **(8)** see also **(9)** about duration of approval).

Questions have been raised about some of the implications of the deemed decision provisions. One issue is whether the standard conditions will be sufficient to address the majority of cases or whether the Minister may end up needing to call in applications to make sure that appropriate conditions are set if the assessment manager has not imposed its own conditions because of the deemed approval. A related problem is what happens in situations where, although a deemed approval is 'made', approval should not have ever been given or the standard conditions are insufficient? For instance, if a development is deemed to be approved but it, for example, causes flooding, is the State or the local government responsible? Or, because the standard conditions are to be taken (under cl 332) to have been imposed by the assessment manager (usually a local government), it may be that the assessment manager is responsible?[78]

The DIP notes that these deemed decision provisions are intended to overcome delays caused by assessment managers taking longer than the legislated timeframe to make a decision.[79] Property Council of Australia (Qld) chief executive, Steve Greenwood, is reported to regard the deemed approval amendment as significant.[80] He indicated that, presently, if there is no assessment by the local government, there is an assumption the application will be refused but this will be reversed by the Bill's deemed approval provisions. Mr Greenwood believes that the change will '*make the council sit up and focus on approving important applications*' as there is currently no onus on councils or agencies to process the applications in a timely manner.[81] He considers that deemed approvals will '*go a long way to ensure that valuable jobs and dollars are not lost*', and that, in order to meet the timeframes, councils and agencies will need to invest in better resourcing, decision making

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78 These are among the various questions raised by Sarah Persijn, pp 9-10.

79 'Proposed changes to planning and development in Queensland – Summary of Changes', p 3.

80 Jayne Munday, 'Sustainable Planning Bill speeds up approvals', *Queensland Business Review*, 2 July 2009; Property Council of Australia, 'New Queensland Planning Act Passes Cabinet', *propertyoz.com.au*, 11 June 2009.

81 Jayne Munday.

procedures and planning.[82] Indeed, deemed approval provisions might create problems for smaller councils that are not sufficiently resourced.[83]

The Minister for Planning, the Hon Stirling Hinchliffe MP, notes that the deemed approval provisions are a significant reform requiring that assessment managers allocate their resources appropriately. He said that it was expected that '*social and economic benefits* [would] *flow, with greater certainty for applicants as well faster on-the-ground delivery….*'[84] On the other hand, Acting Local Government Association of Queensland (LGAQ) president, Councillor Bob Abbot, argues that deemed approvals were '*weighted heavily in favour of developers*'.[85] This view has been countered by the Minister who said that although developers can get 'deemed approvals' for applications that have not been dealt with within the timeframe, the legislation will also demand more comprehensive and better quality development applications. Mr Hinchliffe MP said that the '*development industry should not interpret* [the deemed approval provisions] *as government giving them a handout…. The decision to make this change was about providing certainty for all*'.[86]

One planning law expert has suggested that local governments may respond to the new deemed approval process by merely refusing applications automatically, unless applicants agree to extensions of time. On the other hand, local governments might, instead, opt not to categorise development as 'code assessable' in their planning schemes so that development does not attract the deemed approval process.[87]

6.4.5 Compliance Assessment

While the **compliance stage** appears to come as the final IDAS stage, it is made clear in cl 257 that for applications needing only compliance assessment, the compliance stage will be the **only** IDAS stage that applies to the development application. A *compliance permit* applies to development needing compliance

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82 'Greens attack "destructive" planning bill', *Sunshine Coast Daily Online*, 17 June 2009.

83 McCullough Robertson Lawyers, p 5.

84 Hon SJ Hinchliffe MP, Second Reading Speech, p 1154.

85 Local Government Association of Queensland, 'Alarm Bells Ring for Councils Over New Planning Act', *News Release*.

86 Craig Johnstone, 'Builders "aren't favoured" by laws, *Courier Mail*, 23 June 2009, p 11.

87 David Nicholls, p 6.

assessment and a *compliance certificate* applies to documents or works requiring such.

At present, s 3.5.31A of the *IP Act* enables a type of 'compliance assessment'. If, for a matter prescribed under a Regulation, a condition requires a document or work to be assessed for compliance with a condition, the assessment is carried out in the way the Regulation prescribes.

Part of the IDAS reform proposals concern expanding the current compliance assessment process to apply to a wider range of compliance matters than currently the case (as seen earlier). Although IDAS will have clearer processes and timeframes for compliance assessment, it may still not be sufficiently expeditious and uncomplicated for the more non-complex or 'technical' proposals. For instance, some applications only require assessment for compliance against provisions of a planning instrument (see *Explanatory Notes*, p 206).

Chapter 6, **Part 10** of the Bill introduces a new compliance stage which is intended to allow certain 'technical type' developments, documents or work to be approved if they comply with specified criteria so that certain development can be assessed more quickly and efficiently but without compromising the benefits of IDAS.[88] It is envisaged that compliance assessment is suited to development applications where there are clear technical standards; there is no need for the exercise of broad discretion in deciding compliance; and integrated referrals are not necessary.

Compliance assessment enables a development, a document or work to be assessed for compliance against a matter or thing prescribed under a Regulation; or a planning instrument; or a master plan; or a preliminary approval varying the effect of a planning scheme; or a condition of a development approval (**cl 393**). The compliance stage starts on the day a request for compliance assessment is given (**cl 400**).[89]

The compliance stage applies to development which a Regulation under cl 232(1) prescribes as requiring compliance assessment; or to a document or work relating to a development that requires compliance assessment under cl 397 (**cl 396**).[90] Compliance assessment for documents or work can be nominated by the laws or instruments etc. (relevant instruments) listed in **cl 397**. A regulation (for development) or a relevant instrument (for documents or work) states the matters or

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88 *Explanatory Notes*, p 206. See also, 'Proposed changes to planning and development in Queensland – Summary of Changes', p 3.

89 Clause 401 states the requirements for making a request, including the fee.

90 A Regulation under cl 232(1) can require development to undergo compliance assessment.

things against which the development, document or work must be assessed, and the entity to whom a request for compliance assessment must be made (the compliance assessor), and may state when the request for compliance assessment for documents or work must be made. Note also, under **cl 398**, that a condition of a development approval may state that a document or work (but not development) requires compliance assessment against the matters or things mentioned in **cl 398(3)**.

The compliance assessor will be a local government; a nominated entity of a local government; or a State entity (**cl 399**). Allowing local governments to nominate entities to undertake compliance assessment means they can use external resources in doing so and this could potentially enable entities, such as professional engineers, to be compliance assessors (see *Explanatory Notes*, p 209).

There may be some situations in which the compliance assessor is a nominated local government entity but the relevant instrument makes an aspect of the development assessable by the local government itself. In such a case, the local government must, within 10 business days, assess this aspect of the development against matters or things mentioned in cl 403 (see below) relevant to that aspect and provide its response to the assessor. The local government must tell the assessor what conditions to attach to the compliance permit; or that the local government is satisfied the development does not achieve compliance (giving reasons and stating the action needed to be taken for the development to comply); or that it has no requirements (**cl 402**). If there is no response by the local government within the 10 business day timeframe, the local government is taken to have no requirements.

The development, documents or work must be assessed only against matters or things stated under a Regulation, State planning regulatory provision; relevant instrument or condition requiring the compliance assessment (**cl 403**). A local government can agree to assess a request for compliance assessment under a superseded planning scheme (see **cl 404**).

The process for deciding the request is set out in **cl 405**. Timeframes for deciding are stated in **cl 408** and will generally be prescribed by Regulation. However, if the request is referred to a local government, as discussed above, the request cannot be decided until at least 15 business days after giving the request to the local government to ensure the latter has time to respond to the compliance assessor. Failure to comply with the timeframes will result in a deemed approval without conditions (cl 408(2)).

Pursuant to **cl 405**, if the compliance assessor is satisfied the development achieves compliance or would do so if certain conditions were complied with, a **compliance permit** must be given which authorises development to the extent stated. The

compliance permit can be subject to the conditions and the conditions must be relevant and reasonable.[91]

However, if the compliance assessor is not satisfied compliance is achieved or a local government has told the assessor that it does not consider a development achieves compliance, the assessor must give the requestor a written **action notice** stating specified matters in **cl 405(5)**. Those matters include the reasons why compliance is not achieved; the action required to achieve compliance; and a reasonable period within which the requestor may take the required action and again make a request for compliance assessment. The notice must also state that the requestor can make written representations about those reasons, required actions or the period within which to make a further request; that the request may lapse if there is no further request after the action is taken; and the right of appeal. Note that compliance requests cannot be refused (*Explanatory Notes*, p 212).[92]

If, after a requestor is given an action notice, the requestor has not made written representations about the action notice and does not again apply for compliance assessment within the period stated in the notice, the request will lapse at the end of the stated period (**cl 411(2)**).[93]

The compliance permit for development takes effect – and development may start – when it is given. However, if the requester appeals, it takes effect when the appeal is finally decided or withdrawn. It attaches to the land subject of the request binding the owner and the owner's successors in title and any occupiers. The permit will lapse if the development is not completed within the period stated by a condition of the permit or, otherwise, within the prescribed period (**cls 409**, **410**).

Provision is made in **cl 412** for the compliance assessor to withdraw the action notice and decide the request for compliance assessment if the compliance assessor agrees with all the written representations made by the person given the action notice. If the assessor agrees with some, but not all, of the representations about whether the development etc. achieves compliance, or agrees with any representations about the action required to be taken or the period within which to make another request, a new action notice is issued. However, if the local government has responded to the nominated entity as the compliance assessor that

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91 See cl 394. A compliance certificate approves documents or work on the same basis (cl 395). See also, cls 406 and 407.

92 A Regulation may prescribe additional requirements and actions to be taken (cl 415) and cl 416 deals with the effect on deciding the request if action is taken under the *Native Title Act 1993* (Cth).

93 See cl 411(3) for lapsing of the request when a new action notice is given under cl 412(4) or (5) or an assessment notice under cl 412(9).

compliance is not achieved, an action notice cannot be withdrawn nor a new one given without the local government agreeing. If none of the representations are agreed with, the decision will be neither to withdraw the action notice nor to issue a new one.[94]

The 'compliance assessment' reform aspect of the Bill appears to have attracted considerable media attention and response from industry and community groups.

The Property Council of Australia supports the compliance assessment proposals stating that the roll-out of RiskSMART indicated '*the tangible benefits fast-tracking can offer. … Compliance assessment is the next step in bringing these benefits to the wider Queensland community*'.[95] On the other hand, Acting LGAQ president, Councillor Bob Abbot, argues that compliance assessment would give councils no say over some applications.[96]

6.4.6 Commencement and Duration of Approvals

Current IP Act

Section 3.5.19 of the *IP Act* currently states when the development approval takes effect, allowing for any appeals. In general, the approval remains in force for 2 years but it will operate for 4 years for a material change of use or reconfiguration involving operational works (but another period can be provided for in the decision) (see s 3.5.21-3.5.22). Approvals lapse at the end of the relevant period unless the circumstances in s 3.5.21 operate.

Sustainable Planning Bill

Approval will take effect in accordance with **cl 339** of the Bill (e.g. if there are no submitters and the applicant does not intend appealing, it takes effect immediately when the decision notice is given).[97] Under **cl 340** development can start when the permit takes effect; or when the deemed approval has effect (but see cl 340(3) where development occurs in a declared master planned area).

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94 A compliance permit or certificate can be changed (see cls 413 and 414**)**.

95 Property Council of Australia, 'New Queensland Planning Act Passes Cabinet'.

96 LGAQ, 'Alarm Bells Ring for Councils Over New Planning Act'.

97 A deemed approval will generally have effect from when the decision notice should have been given. See also, cl 339(2)-(5).

Arrangements for the **lapsing** of approvals are found in **cls 341-343** of the Bill.

Clause 341 sets out the default times for different types of developments lapsing where *development has not started* (e.g. 4 years for material change of use and reconfiguring a lot needing operational works compared with 2 years for other development). The development approval can state a different period.

The ability to vary lapsing times is useful for large, complex projects which may have a number of preliminary approvals applying to it and the construction phase may be intended to take 15 or more years to complete (see *Explanatory Notes*, pp 178-179 for more details). The *Explanatory Notes* (p 179) state that the start of the approval periods for material changes of use and reconfiguring a lot will 'roll forward' in some circumstances to align with the beginning of the period for 'related approvals'. A 'related approval' is defined for material change of use approvals and reconfiguring of lot approvals (see **cl 341(7)**; *Explanatory Notes*, pp 179-180).

Clause 342 deals with when the approval for assessable development lapses if *development starts but is not completed* within the time required by the approval condition. The approval lapses to the extent it relates to the incomplete development. Clause 342(3) deals with security paid being used to finish the development.

Clause 343 is a new provision setting out the lapsing arrangements where there is a *preliminary approval to which cl 242 applies* (varying the effect of a local planning instrument) *and development has started but not completed* in the prescribed period for the approval. In this case, the approval lapses at the end of the prescribed period. The 'prescribed period' is that stated as a condition of the approval or the period nominated by the applicant. Otherwise, the default lapsing period is 5 years after the day the approval (or last related approval, if relevant) takes effect.

The *Explanatory Notes* (p 181) indicate that the *IP Act* currently provides for conditions to establish lapsing arrangements for preliminary approvals in these circumstances. However, they are not often used, resulting in many approvals having indefinite effect once development begins. It is further indicated (p 182) that this is a problem for preliminary approval affecting planning schemes because large, multi-stage development proposals may be authorised with long timeframes which, without lapsing arrangements, may mean a resulting development that does not later fit with contemporary community expectations.

The new cl 343 enables the applicant and the assessment manager to establish a lapsing period but if this fails, the default period is 5 years. As observed by the *Explanatory Notes* (p 182), this is a short period and may, therefore, provide incentive for applicants to nominate a longer time in their applications.

Clauses 383-390 set out the process for extending the period of an approval, before it lapses, at the request of an owner of the land or another person with the owner's

consent (unless exceptions apply to needing that consent). The provisions do not apply necessarily to an applicant but to a 'person' who may or may not be the owner. They also provide when the assessment manager must refuse the request and the timeframes for deciding the request (usually within 30 business days of receiving the request) and the matters to which regard must be had. The older a development approval becomes, the more likely it will be that laws and policies etc. will change along with community expectations and with population increases and changes (see *Explanatory Notes*, pp 202-203).[98]

6.4.7 Dealing with Decision Notices and Approvals

These matters are covered in **Chapter 6**, **Part 8** of the Bill.

Changing Decision Notices and Approvals During Appeal Period

The *Explanatory Notes* (p 191) state that the purpose of **cls 360-366** is to give an applicant the opportunity to make representations during the appeal period about matters in the decision notice or the standard conditions automatically applying to a deemed approval. The provisions will not apply to a matter told to the assessment manager by a concurrence agency (e.g. to impose conditions)[99] or a condition directed to be attached by the Minister. It appears that cls 360-366 attempt to avoid the need for disputes about conditions and other matters to be resolved through a formal appeal process. If the assessment manager agrees with the applicant's representations, the decision notice can be changed, after also considering any relevant matters that had to be considered when assessing the application. This 'negotiated decision notice' must be given to the specified parties within 5 business days of the agreement.

If there is no agreement, the assessment manager must notify the applicant in writing that there is no agreement. A 5 business day timeframe applies.[100]

A dispute about a refusal of an application does not fall under this representation process as it is seen as more appropriate that this be resolved through the appeal processes in Ch 7 of the Bill (see *Explanatory Notes*, p 191).

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98 Clause 391 provides when particular approvals must be recorded on the local government's planning scheme. The information is then available for public inspection.

99 Clauses 319 to 321 enable applicants to make representations to a concurrence agency.

100 Clauses 364-365 concern giving new infrastructure charges notices; regulated infrastructure charges notices and State infrastructure charges notices. Applicants can also suspend the appeal period to make representations under cl 366.

Changing Approvals After Appeal Period Ends

Representations received during the *IP Act* review suggest that the existing separate processes under ss 3.5.24-25, and 3.5.33 of the *IP Act* for changing development approvals are complex and restrictive (see *Explanatory Notes*, p 194). Accordingly, **cls 367-377** are designed to consolidate, simplify and allow '*more flexible arrangements for changing development approvals, including conditions*' (see *Explanatory Notes*, p 194). The main points to note are now briefly summarised.

The only 'permissible changes' that can be made to an approval are ones that:

- would not result in a substantially different development; or
- if it was a new application, more referral agencies would not be included; or
- if it was a new application, it would not require impact assessment if it previously did not need impact assessment; or
- if it did previously require impact assessment, it would not be likely to cause a person to object to the proposed change, if the circumstances allowed; or
- would not cause the development to include any prohibited development.

Planning instruments or laws in force at the time of the request for change apply in deciding if it would trigger new concurrence agencies or require impact assessment or cause it to include prohibited development. It is whether the change itself would trigger or require these things (see cl 367(2), (3)).

Before a request for a change is made, a 'pre-request' written notice must be given to any relevant entities (other parties to the change) and the relevant entities may respond stating whether or not they object (early agreement speeds up the process) (see **cl 368**).

For a permissible change, a person (generally any person but see cl 369(4) regarding certain works) must by written notice ask the 'responsible entity' to make the change. The 'responsible entity' for making the request will depend on who gave the approval or imposed the condition sought to be changed (e.g. if the Court gave the approval, the Court must be approached for the permissible change).[101]

Any relevant party entity given a copy of the request must, within 20 business days, give the responsible entity written notice advising that it has no objection to the change, or that it does object and the reasons for that objection. The responsible entity assesses the request having regard to matters in **cl 374(1)** and to the planning instruments, plans, codes, laws or policies applying at the time of the original

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[101] Clause 370 sets out when a form must be used for the request; requires the relevant fee to accompany the request; and other information and evidence stated in cl 370(2)-(5). Clause 371 provides when the owner's consent is or is not required. Copies of request must be given to other relevant parties (cl 372).

application but giving appropriate weight to those applying when the request was made. The request is generally to be decided within 30 business days of receiving it.

The responsible entity can approve the request (with or without conditions relating to the change) or refuse it. The written notice of decision must contain the requirements in **cl 376(2)-(6)** and be given to persons and entities specified in **cl 376(1)**. If the request is refused, reasons must be provided and rights of appeal indicated.

Changing or Cancelling Particular Conditions Other Than on Request

Clause 378 provides an assessment manager or concurrence agency or entity with jurisdiction for a development condition with a limited ability to change or cancel a development condition without the consent of the owner or occupier of the land (although submissions can be made prior to the final decision).

Cancelling, Extending and Recording Approvals

Clauses 379-382 deal with requests to cancel a development approval by the owner of the land or another person with the owner's consent before the development has started. Various limitations and restrictions apply (e.g. cannot request cancellation if development has begun).[102]

6.5 MINISTERIAL IDAS POWERS

Chapter 6, **Part 11** of the Bill expands Ministerial IDAS powers. The 'Minister' for the purpose of giving directions is defined in Sch 3 as the Minister administering the Bill and the regional planning Minister. The definition is broader in relation to call-in powers (see below).

As observed by the *Explanatory Notes* (p 9), there is no right of appeal against the Minister's IDAS powers nor can declaratory proceedings be brought (except in limited situations). The *Explanatory Notes* state that such rights, in respect of a called in application, '*would be inconsistent with the intent of the Bill to allow the State to be the final arbiter on matters of State interest. … The Minister is directly accountable to Parliament*'. In relation to Ministerial directions, the *Explanatory Notes* (pp 9-10) comment that because the direction powers '*are intended to give the Minister the*

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[102] Chapter 6, Part 9 relates to applying IDAS to mobile and temporary environmentally relevant activities (ERAs) so that such ERAs are taken to be 'development' for the purpose (and just the purpose) of using IDAS, with specified changes, to assess and condition proposed mobile and temporary ERAs.

power to "speed up" the IDAS process [or, in relation to directions in relation to applications involving State interests, are provided for the same reasons as are the call-in powers], *any appeal rights or ability to seek a declaration would frustrate these objectives*'.

6.5.1 Ministerial Directions

Ministerial directions relate mainly to procedural issues and the types of directions that the Minister can give have been reduced under the Bill (see *Explanatory Notes*, p 9).

The Minister will have the power to direct (by Gazettal notice and publication in a newspaper with State circulation)[103] an assessment manager to *give the Minister a copy of all future applications* for particular development involving a State interest, or for development in a particular area involving a State interest (**cl 417**). This new provision appears to be intended to better complement the Minister's call-in powers and to enable the Minister to consider if those powers need to be exercised or if some further direction should be given.[104]

If the assessment manager has not yet decided a particular application, **cl 418(1)(a)** will allow the Minister to give a written *direction to not decide an application until the end of a stated period* of not more than 20 business days after the direction. This will only apply where the development does or may involve a State interest. This will suspend the IDAS process for a maximum of 20 days so the Minister can consider whether to call in the application or issue a further direction under **cl 418(5)**. The Minister cannot call in the application after that stated period ends (**cl 418(6**)).

Further, under **cl 418(1)(b)-(f)**, the Minister can direct the assessment manager to:

- *decide an application within a stated period* of at least 20 business days if the application has not been decided within the IDAS timeframes, including any extensions; or
- *decide the application within the decision making period* (20 business days from the start of the decision stage with no room for extension) if the development involves a State interest; or

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[103] The notice must contain the matters specified in cl 417(4) (including, e.g. details of the relevant development or area; the State interest involved, various procedural matters). Copies of the notice must be given to likely assessment managers or referral agencies.

[104] 'Proposed changes to planning and development in Queensland – Summary of Changes', p 3; *Explanatory Notes*, p 218.

- *decide whether to give a negotiated decision notice* (on representations made by the applicant during the appeal period regarding the assessment manager's decision) within a stated period of at least 20 business days; or
- *take an action under IDAS within a reasonable stated period* if the assessment manager has not otherwise complied with the IDAS for taking the action, or if the Minister is satisfied that the development involves a State interest.[105]

The proposed expanded power for the Minister to give directions to assessment managers to *decide an application within the decision making period* or to take an *action under IDAS within the stated period* where the development involves a State interest appears to relate to an election commitment by the present Queensland Government to expand Ministerial IDAS powers to allow the Minister to 'fast track' approvals where the development '*exhibits exemplary sustainability features*'.[106]

Clause 419 allows the Minister to direct an assessment manager to *attach a condition* to a development approval when the development involves a State interest and there is not yet any decision made or deemed approval in effect. In addition, the matter the subject of the direction must not be within the jurisdiction of the concurrence agencies.[107] The *Explanatory Notes* (p 221) observe that the provision will allow the Minister to impose conditions on a deemed approval even after an applicant has given a deemed approval notice to the assessment manager.

The Minister must prepare and table in Parliament a report about the giving of a cl 419 direction containing matters specified in **cl 422** within 14 sitting days after the decision is made. This provision will, according to the *Explanatory Notes* (p 222) provide for some accountability for the decision to impose conditions on approvals and is based on the same requirement (cl 433) regarding Ministerial call-in powers.

Clause 420 enables the Minister to give *directions to concurrence agencies* in relation to their responses and/or conditions in certain circumstances. The Minister may also direct that certain action be taken by the concurrence agency if satisfied that it has not taken action under IDAS within the timeframes or the development involves a State interest.

The Minister may give a *direction to an applicant* who has not complied with a stage of IDAS or an aspect of an IDAS stage to take stated action to ensure

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105 The notice requirements are found in cl 418(2) and copies must be given to the applicant and any referral agencies.

106 'Proposed changes to planning and development in Queensland – Summary of Changes', p 3.

107 The notice requirements are found in cl 419(2) and (3).

compliance with IDAS (**cl 421**).[108] The direction can also state the point in the IDAS process from which the process must restart.

6.5.2 Ministerial Call-in Powers

The definition of 'Minister' for the exercise of Ministerial call-in powers under **cls 423-433** is broader than that for issuing directions. The 'Minister' also includes the Minister administering the *State Development and Public Works Organisation Act 1971* (Qld) (who has a wide coordinating role under that Act) in addition to the Minister administering the Bill and the regional planning Minister (**cl 423**).

Clause 424 provides that the Minister may call in an application only if the development involves a State interest. It can be called in at any time after the application is made ***until*** the latest of: 15 business days after the chief executive receives notice of an appeal; or 50 business days after the day the decision notice or negotiated decision notice is given to the applicant (or 25 days if there are no submitters); or 25 business days after a deemed approval.

The *Explanatory Notes* (p 222) point out that because the call-in power is a State reserve power, it is not intended that it be used often or routinely but:

> *occasions may arise where a State interest (such as an important environmental value) could be severely affected by the implementation of a development approval. In these situations, … [to] call the application in and assess and decide, or reassess and re-decide, the application provides the Minister with an ability to redress what otherwise could become a serious problem for the community as a whole.*

Clause 425 sets out the process for the calling in of an application. In summary, it is by way of written notice to the assessment manager (copies to other specified parties) stating specified matters. These include matters such as why the application is being called in and whether or not the Minister intends to assess and decide, or reassess and re-decide, the application having regard to State interests only, rather than in accordance with the assessment and decision provisions.[109]

If the application is called in after the assessment manager decides the application, the notice must state the point in IDAS from which the process must restart. If the call-in is before a decision is made, the Minister may, in the notice, direct the

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[108] The notice requirements are found in cl 421(2)-(4).

[109] The assessment and decision provisions are cls 313 (code assessment); 314 (impact assessment); 316 (assessment for a preliminary approval that affects a local planning individual); 326 (decision rules regarding conflict with a relevant instrument); 329 (decision rules regarding preliminary approval to vary the effect of a local planning instrument when there is a conflict with a relevant instrument).

assessment manager to assess, or continue to assess, the application on the Minister's behalf and then refer it to the Minister for decision (but this cannot happen if it is the Minister's intention to decide the application on the basis of a State interest only).

After calling in the application the Minister has the powers given by **cl 426**. If the application is called in before a decision on it has been made, the Minister may assess and decide the application instead of the assessment manager. While this power exists under the *IP Act*, a new power is provided in cl 426(1) for the Minister to direct the assessment manager to assess the application once the decision stage begins, or to continue to assess it (if assessment has started). The assessment manager then forwards the assessment to the Minister along with recommendations so that the Minister can decide the application. However, the Minister cannot require the assessment manager to assess the application if the Minister wishes to decide the application on the basis of State interests only (see *Explanatory Notes*, p 224).

If the application is called in after the assessment manager decides it, the Minister may reassess and re-decide the application in place of the assessment manager. If the Minister considers it appropriate in the circumstances, the Minister can assess and decide or reassess and re-decide the application having regard only to the State interest for which the application was called in, rather than in accordance with the assessment and decision provisions.

The effect of call-in is set out in **cl 427**. Once called in, the Minister is the assessment manager for the application from that time until the Minister gives the decision notice. If the call-in is before the assessment manager decides the application, the IDAS process continues from the point at which it is called in. If the call-in occurs after the decision is made, the IDAS process starts again from a point that the Minister decides but before or at the start of the decision stage. Thus, the Minister will need to follow IDAS in assessing and deciding the application, other than the assessment and decision provisions, if the application is to be assessed and decided only on the basis of the State interest for which it was called in. The effect is that called in applications are assessed according to the normal IDAS process in most cases. However, some variations apply in relation to called in applications:

- concurrence agencies are taken to be advice agencies until the application is decided by the Minister;
- although the Minister's decision is taken to be that of the original assessment manager, no appeal rights apply to the Minister's decision and any appeals begun before the call-in are of no further effect;
- if the Minister assesses and decides, or reassesses and re-decides the application:

- the deemed approval provisions will not apply if the Minister does not decide in within the IDAS timeframe; and
- if done having regard only to the State interest, the assessment and decision provisions do not apply; and
- the Minister may, in assessing the application, have regard to the common material and any other matter considered relevant to the State interest.

The original assessment manager before the call-in must give the Minister all reasonable assistance to assess or decide the application (giving the Minister all relevant material) (**cl 428**). The Minister must give a copy of the decision notice to the original assessment manager at the same time the decision notice is given to the applicant. The notice need not state some of the matters usually contained in such notice as those are not relevant to call-in cases (**cl 429**). Where the decision notice does not decide all aspects of the application, the Minister must refer these aspects back to the assessment manager by way of written notice stating where in the IDAS process the process must restart (**cl 431**).[110]

The Minister must, as with an exercise of a Ministerial direction, prepare and table in Parliament a report about the Minister's decision on call-in (**cl 432**). The Minister can also require a report from the assessment manager about a person's compliance with a development approval for aspects of a called in application decided by the Minister (**cl 433**).

6.6 APPEALS AND REVIEW

Under Ch 4, Part 1, Division 8 of the *IP Act*, development application decisions under IDAS can be appealed to the Planning and Environment Court (the Court) by an applicant, a submitter or an advice agency submitter (in certain circumstances – see s 4.1.29). The appeal is by way of a hearing *de novo* with the Court standing in the shoes of the decision maker and it can confirm the original decision; or set it aside and make a new decision. A limited right of appeal to the Court of Appeal is provided. Recourse can also be had to the Building and Development Tribunal.

The **appeal** rights of applicants and submitters regarding IDAS remain much the same under **Chapter 7** of the Bill. However, there have been some changes to meet concerns raised by stakeholders during the *IP Act* review. Chapter 7 also contains **offence** provisions and **enforcement** measures but these will not be discussed here.

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[110] Clause 430 is an additional provision that enables the regional planning Minister to call in and "hold" a development application during the process of making a regional plan.

A new **cl 440** will replace s 4.1.5A of the *IP Act* to broaden the Court's discretion to excuse non-compliance with a provision of the Bill or another Act in its application to the Bill. Under the *IP Act*, before being able to excuse non-compliance, the Court has to first find that a requirement of the *IP Act* or another Act applying to the *IP Act* has not been complied with or fully complied with. It then has to be satisfied that the non-compliance has not substantially restricted the opportunity for a person to exercise their rights conferred by the *IP Act* or the other Act. Under **cl 440**, before being able to excuse non-compliance, the Court no longer needs to be satisfied that a person's opportunity to exercise rights has been restricted by the non-compliance. Further, the non-compliance need now only relate to *a provision* rather than the non-compliance being with a *requirement* of the *IP Act*,[111] It has also tended to be the Court's view that its exercise of discretion under s 4.1.5A of the *IP Act* cannot cure a deficiency in an application. This means that the application is 'not properly made'.[112] However, cl 440(3) now also declares that cl 440 applies in relation to a development application that has lapsed or is not properly made.

There will be more options for early dispute resolution under the Bill. For instance, the Building and Development Dispute Resolution Committee (Committee), formerly called the Building and Development Tribunal, will have expanded jurisdiction (**cls 502-508**). Parties seeking to appeal can elect to bring proceedings before either the Court or the Committee but a matter can be remitted by the Court to the Committee if it is within the latter's jurisdiction. In both cases, the appeal must be started within 20 business days after the notice, permit or certificate is given to the person. A limited right of appeal still lies to the Court of Appeal from the Court.

The matters which an applicant for a development application can appeal to the Court are listed in **cl 461** and relate to determinative decisions under IDAS (e.g. refusal or part refusal of the development application or the imposition of any condition on a development permit) as opposed to a non-determinative decision made during the assessment process (but a declaration can be sought in relation to the latter type of decisions). The matters a submitter can appeal are contained in **cls 462** and **463** (e.g. giving of an approval). **Clauses 464-467** set out other rights of appeal and **cls 468-470** concern appeals about compliance assessment.

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111 The need for a 'requirement' has been narrowly interpreted by the Court. For instance, a submission did not include an address but the Court found that the *IP Act* did not 'require' that a submission state the address so the Court could not deal with it: see Jack Dixon, HopgoodGanim Lawyers, 'The Court and the Building and Development Dispute Resolution Committee', *Exclusive Briefing Paper*, p 3.

112 Jack Dixon, p 4, citing cases such as *Barro Group Pty Ltd v Redland Shire Council* [2009] QPEC 9.

The Committee enables a wider range of persons to utilise its quicker and less expensive processes than the current Tribunal and it will be able to make declarations about whether an application is properly made; matters in acknowledgement notices; lapsing of requests for compliance assessments; and whether a change to an approval is a 'permissible change' (**cls 510-513**). It will also be able to hear appeals about a range of matters such as decisions on requests for compliance assessment (e.g. to issue an action notice); specified decisions relating to material change of use applications for a prescribed building; conditions of a compliance permit (see **cls 519-535** for the range of matters). The Committee cannot deal with appeals about impact assessable development applications where a properly made submission was received. Lawyers are not allowed to appear before the Committee. A limited right of appeal to the Court will lie.

The concept of parties bearing their own costs is preserved but the Court will have more power (**cl 457**) to make an adverse order for costs against a party the Court considers has brought or continues the proceedings primarily to delay or obstruct (not just that they are instituted merely to delay or obstruct as under the *IP Act*). This power would be relevant where a commercial competitor might institute an appeal without any real basis (see the example in the *Explanatory Notes*, p 234).

Clause 757 provides that the *Judicial Review Act 1991* does not apply to decisions made under the Bill but a person who cannot make an application under this Act can, nevertheless, apply for a statement of reasons for a decision made under the Bill. The *Explanatory Notes* (pp 7-8, 350) comment, however, that the Bill provides for '*full review and appeal rights to the* [Court] *and/or* [Committee] *(except in the limited case of Ministerial call-ins and directions…)*'. In addition, the *Explanatory Notes* (p 9) state that the Court and the Committee will be able to make declarations about most administrative decisions made under the Bill. Both forums '*are expert jurisdictions that can deal with the review of applications expeditiously… In this respect, it is considered that the Bill enhances the ability to seek review of administrative decision, particularly for the general public…*'.

6.7 TRANSITIONAL ARRANGEMENTS AND MISCELLANEOUS MATTERS

Arrangements providing for **transition** from the *IP Act* to the Bill are set out in **Chapter 10**. Only the transitional provisions relating to IDAS will be summarised here and Ch 10 should be referred to for details about the transitional arrangements relating to planning instruments, infrastructure, and other matters.

Chapter 10, **Part** 2, **Division 6** establishes transitional provisions for IDAS. Among those provisions are those now outlined but **cls 801-815** set out the full range. For example:

- a development approval in force at commencement of the Act (i.e. when the Bill is passed) will be an approval under the Act;

- development applications made but not determined at commencement will be determined under the *IP Act*, subject to some exceptions;
- representations made before commencement will result in the *IP Act* applying to actions in relation to negotiated decision notices;
- applications to extend the period of an approval under s 3.5.21 made but not determined before commencement will be dealt with under the *IP Act*;
- applications to change or to cancel a development approval made but not determined before commencement continue to be determined as if the *IP Act* has not been repealed when the Bill commences as an Act.

Although applications made under the *IP Act* will continue to be assessed under that Act, referral agencies and assessment managers can consider, in addition to the things they must consider under the *IP Act*, the laws, planning schemes, policies or codes made or taken to be made under the Bill (when it becomes and Act). A preliminary approval given under s 3.1.6 of the *IP Act* (to override a planning instrument) will continue in force under the new Act and it will not be subject to the cl 343 of the Bill's time limits on completion of development (so the cl 342 lapsing provisions will apply rather than the default ones under cl 243, i.e. 5 years after the date of preliminary approval taking effect).

Chapter 9 of the Bill covers a range of **miscellaneous** matters currently found in Ch 1, Part 4 of the *IP Act*. Those things include: how existing rights to develop land or commence uses are protected and dealt with; how environmental impact statements (EIS) processes are undertaken, and, among other things, how an EIS process affects development under IDAS; compensation for changes to various interests in land; powers of local government to take or buy land; and powers of assessment managers or relevant entities to enter land; public housing development; public access to information; and a modified notification process for certain aquaculture development in the Great Barrier Reef Marine Park.

APPENDIX

DIP – Department of Infrastrucutre and Planning

IDAS – the **Integrated Development Assessment System** – forms the central focus of this Research Brief and will be explained in the Brief itself.

Local Planning Instruments are a collective term for planning schemes; temporary local planning instruments and planning scheme policies.

Planning Schemes are schemes prepared by local governments to manage growth and change in their local government areas and coordinate matters to be dealt with as well as State and regional dimensions of such matters expressed through regional plans and State Planning Policies (SPPs).

Regional Plans provide a key means for the State Government to articulate and achieve desired planning and development outcomes for a particular area. An example of a current regional plan is the SEQ Regional Plan to provide guidance on the management and development of the region that covers more than one local government area (such as transport and services that are needed) and to integrate and reconcile State interests. Council planning schemes are prepared within the context of a regional plan.

State Planning Instruments are a collective term for State planning regulatory provisions; regional plans, State planning policies and standard planning scheme provisions.

A **State Interest** is defined in Sch 6 of the Bill (somewhat similarly to the current definition under the *IP Act*) as an interest that the Minister considers affects an economic or environmental interest of the State or part thereof, including sustainable development; or an interest that the Minister considers affects the interest of ensuring there is an efficient, effective and accountable planning and development assessment system.

Standard Planning Scheme Provisions will be new State instruments under the Bill and will seek to achieve consistent local government planning schemes across the State by being progressively reflected in planning schemes as new ones are made. Standard provisions will include specifications about the format of the planning scheme, standard definitions and administrative matters, zoning etc.

State Planning Policies (SPPs) are a way for the State Government to set out its interests in development matters and drives council planning schemes so that the State's requirements can be incorporated in local planning instruments.

A **State Planning Regulatory Provision** is a State instrument made for an area to advance the purpose of the *IP Act* (and, if passed, the Bill). It can be used for a number of things such as to provide regulatory support for regional or master planning or to protect planning scheme areas from adverse impacts. Generally, it will prevail over other planning instruments, plans, policies and codes.

Structure Plans are integrated land use plans in master planned areas setting out the broad environmental infrastructure and development intent to guide detailed planning for the area. They form part of the planning scheme. Among other things a structure plan must set out a code that sets out development entitlements; provisions about master plans; state categories of development etc.

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