# Your guide to the Sustainable Planning Act 2009

**February 2013**

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Queensland Government

The Department of State Development, Infrastructure and Planning leads a coordinated Queensland Government approach to planning, infrastructure and development across the state.



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# Contents

# Queensland's planning, development and building system

*Your guide to the Sustainable Planning Act 2009* provides a brief overview of planning laws in Queensland. The guide is an easy to understand, quick reference tool for the legislation.

The *Sustainable Planning Act 2009* (the Act) is a key component of Queensland's planning, development and building system. It aims to deliver a smarter, faster and simpler system focusing on sustainable outcomes for all Queenslanders.

The need for planning reform was first identified in 2006 as a result of extensive public and stakeholder consultation. To identify practical ways to address these issues, *Dynamic Planning for a Growing State: Options for Improving Queensland's Integrated Planning Act 1997 and Integrated Development Assessment System* was released for public consultation. The discussion paper contained 86 proposed improvements grouped under 22 strategies.

Results from this process and earlier feedback indicated that although there was widespread support for the fundamentals of the *Integrated Planning Act 1997* (IPA), there was a need to extend the scope of the review beyond the improvements contained in the discussion paper. The extended scope of the review indicated a need for new legislation to replace IPA.

The expanded proposals for reforming Queensland's planning and development assessment system were contained in a further paper released publicly in August 2007, *Planning for a Prosperous Queensland–A Reform Agenda for Planning and Development in the Smart State* (the reform agenda).

Of the 80 actions identified in the reform agenda, 42 involved significant legislative change. Some of these reforms were implemented through amendments to IPA including extended powers of Ministerial direction, an expanded regional planning

framework, and the introduction of state planning regulatory provisions. These reforms, together with most of the other legislative initiatives contained in the reform agenda, are reflected in the Act.

The Act is a key tool for implementing the broad planning and development reform process outlined in the reform agenda.

## Benefits of the legislation

The Act is outcomes focused and significantly improves and streamlines the land use planning and development framework and systems. This will reduce costs and get appropriate development approved sooner by:

- streamlining the system—at the plan-making and development assessment levels. This leads to simpler, clearer and better integrated planning that produces more certainty with development assessments. Greater certainty and faster processing reduces costs for applicants, local government and ultimately the community. Broad economic benefits will be realised including the state's commitment to the Housing Affordability Strategy
- clarity—in plan-making that front loads plans with consistent provisions and structure and more effectively integrates state interests in planning. This certainty and integration enables faster development assessment and cost benefits
- greater flexibility and responsiveness—streamlining the systems, including the movement of processes out of a regulatory framework, gives the state greater flexibility to adjust the framework and state level planning interests to meet emerging needs of the state and national and global issues.

## Streamlined plan-making

Plan-making is improved by:

- enhancing mechanisms to achieve state level planning outcomes such as accelerated and clearer state planning instrument development processes
- enhancing Ministerial powers to intervene in the planning and development process, such as directly amending local planning instruments where an urgent issue arises

- clarifying and confirming the precedence and relationship between state planning instruments
- introducing limited prohibitions in prescribed circumstances which will enhance the certainty of development outcomes
- making the infrastructure charging regime even more transparent and equitable through more flexible plan-making processes
- streamlining the plan-making process for local government including through the introduction of standard planning scheme provisions
- moving components of the plan-making process from the legislation to statutory guidelines, which offers the state greater flexibility and responsiveness to emerging issues in plan-making.

## Streamlined development assessment

Changes to the development assessment process will result in:

- clarity and certainty achieved by improved plan-making. This will potentially lead to a reduction in the number of applications entering the system
- more applications progressing through simpler processes (such as the new compliance assessment track)
- simple, streamlined processes for changing applications and dealing with missed referrals
- better quality applications being made.

Time and cost benefits will result in faster and more integrated development on the ground. This is achieved through:

- streamlining and simplifying the development assessment processes such as:
  - shortening timeframes for taking certain actions (such as responding to requests for information)
  - greater flexibility regarding lapsed applications
  - changes to acknowledge the submission of electronic applications
  - deemed approval for certain code assessable applications
  - measures to improve the quality of applications
  - removing ineffective master planning and structure planning arrangements while preserving the use and development rights established by existing master plans and structure plans

- enhanced access and more options for dispute resolution. This includes giving the Planning and Environment Court additional powers in the case of appeals lodged primarily to delay or obstruct development.

## Partnerships to achieve integration and sustainability

As with IPA, a key theme of the Act is integration. The Act's sustainability outcomes are achieved through integrating processes and outcomes in the following ways:

- by providing for an integrated framework of state, regional and local performance-based planning instruments with statutory effect
- maintaining and reforming the Integrated Development Assessment System (IDAS) to improve its efficiency and effectiveness
- providing for integrated approaches to dispute resolution and enforcement.

The Act also contains other mechanisms for achieving its objectives including:

- a funding system for trunk infrastructure (e.g. water and sewerage infrastructure) under the State Planning Regulatory Provision (adopted charges) which sets maximum charges which may be levied for different types of development
- infrastructure agreements that facilitate a flexible, cooperative approach between public and private sectors to provide key infrastructure
- limited and accountable processes for government to acquire land for planning purposes.

# 1. Introduction to the Sustainable Planning Act 2009

Chapter 1 of the Act:

- establishes the Act's purpose and how the purpose may be advanced
- defines the key terms ***development*** and ***ecological sustainability***
- establishes the particular rules of interpretation for the meaning of words in the Act and instruments made under it.

## Purpose of the Act

The purpose of the Act is to seek to achieve ecological sustainability in three ways:

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

The Act emphasises the coordination and integration of planning at the three levels at which it occurs in Queensland namely:

- local (government) planning
- regional planning
- state planning.

Planning at the local and state levels is directly associated with the respective levels of government. Regional planning is primarily the responsibility of the state (as a regional plan is a state interest), however in practice, regional planning is a cooperative activity between local and state governments, through regional planning committees.

Coordination of planning refers to the linking of planning activity within and between levels of government and the linking of different aspects of planning such as natural resource planning, land use planning and infrastructure planning. Integration refers to the combination and rationalisation of planning outcomes and presenting them in an integrated way. Local

government planning schemes remain the key instrument for integrating state, regional and local planning outcomes.

The Act facilitates coordination of planning by:

- providing for robust communication and consultation within and between levels of government as part of the processes for making and amending planning instruments
- establishing bodies, such as regional planning committees, to coordinate planning at a regional level
- establishing the scope of planning instruments in a way which facilitates coordination of different aspects of planning
- establishing a clear hierarchy of planning instruments which interact in a way that will result in integrated planning outcomes
- providing for integrated development assessment
- providing for integrated dispute resolution and enforcement.

## Key definitions

***Ecological sustainability*** is a balance that integrates:

- the protection of ecological processes and natural systems at local, regional, state and wider levels
- economic development
- maintenance of the cultural, economic, physical and social well-being of people and communities.

***Development*** is defined as any of the following:

- carrying out building work
- carrying out plumbing or drainage work
- carrying out operational work
- reconfiguring a lot
- making a material change of use of premises.

# 2. State planning instruments

State planning instruments are statutory instruments under the *Statutory Instruments Act 1992*. If there are any inconsistencies between the provisions of a state planning instrument and a local planning instrument, the state planning instrument prevails to the extent of the inconsistency.

There are four state planning instruments:

- state planning regulatory provisions
- regional plans
- state planning policies
- standard planning scheme provisions.

Each state planning instrument plays a different role under the Act and is intended to serve a different purpose. For example, regional plans relate to specific regions and are intended as a high level integrated and spatial expression of state strategic policy in those regions whereas state planning policies relate to specific state interests.

It is intended that state planning instruments should inform each other and speak for themselves. For example, this means that when preparing a state planning policy, any state planning regulatory provisions and regional plans which are in effect should be considered. The state planning instrument should state how it is to be used in plan-making or development assessment and how it relates to other planning instruments.

Despite this, there may be situations where state planning instruments conflict. For the purposes of both planning and development assessment, the Act therefore includes provisions to identify which instruments prevail in the case of conflict. This hierarchy of state planning instruments is reflected in the structure of chapter 2 of the Act.

## State planning regulatory provisions

**What are state planning regulatory provisions?**

State planning regulatory provisions (SPRP) are a statutory instrument that advance the purpose of the Act by:

- providing regulatory support for regional planning or master planning
- providing for a charge for the supply of infrastructure
- protecting planning scheme areas from adverse impacts.

**Who can make a state planning regulatory provision?**

A SPRP can be made by:

- the planning Minister
- the regional planning Minister
- the planning Minister jointly with any other Minister.

If a SPRP is made by the planning Minister jointly with any other Minister, the other Minister is responsible for the preparation of the draft instrument. The planning Minister is required to endorse the draft instrument at two points in the process, namely prior to publicly notifying the proposed SPRP and prior to making the proposed SPRP. This ensures a collaborative and coordinated approach to the development of a SPRP.

**What is in a state planning regulatory provision?**

An SPRP may:

- specify categories of development, including prohibited development
- require code assessment or impact assessment (or both) for specific types of development
- include a code for the integrated development assessment system (IDAS) or other development assessment criteria
- otherwise regulate development by, for example, stating that development may not occur until a master planning exercise has been carried out
- provide for matters mentioned in section 20 of the Act, such as the implementation of a regional plan or a structure plan or to address a risk of serious environmental harm.

**What is the relationship with other planning instruments?**

To the extent of any inconsistency between an SPRP and any other planning instrument or any plan, policy or code under another Act, the SPRP prevails. The Act allows for an SPRP to suspend or otherwise affect the operation of another planning instrument, but the SPRP does not amend the instrument. This is similar to a temporary local planning instrument which may suspend or otherwise affect a local planning instrument. The SPRP will indicate the effect it is intended to have with respect to other planning instruments.

## Regional plan

**What is a regional plan?**

A regional plan provides an integrated planning policy for a designated region by identifying outcomes and how to achieve those outcomes.

**Who can make a regional plan?**

The regional planning Minister for a designated region must make a regional plan.

**What are the key elements in a regional plan?**

A regional plan must identify:

- the desired regional outcomes for the region
- the policies and actions for achieving the desired regional outcomes
- the desired future spatial structure of the region including:
  - a future regional land use pattern
  - provision for regional infrastructure to service the future regional land use pattern
- key regional environmental, economic and cultural resources to be preserved, maintained or developed.

**What is the relationship with other planning instruments?**

The Act sets out the effect of regional plans in planning and development assessment and their relationships with other planning instruments and instruments made under another Act. Regional plans prevail to the extent of any inconsistency with another planning instrument or any other plan, policy or code under an Act (other than a state planning regulatory provision).

## State planning policies

**What is a state planning policy?**

A state planning policy (SPP) is an instrument that advances the purpose of the Act by declaring the state's policy on a matter of state interest.

**Who can make a state planning policy?**

A SPP can be made by:

- the planning Minister
- the planning Minister jointly with any other Minister.

If a SPP is made by the planning Minister jointly with any other Minister, the other Minister is responsible for the preparation of the draft instrument, with the planning Minister's endorsement at two points in the process, namely prior to publicly notifying the proposed SPP and prior to making the proposed SPP. This ensures a collaborative and coordinated approach to the development of a SPP.

**How long does a state planning policy last?**

SPPs expire ten years after they are made. It is intended that each SPP will be reviewed eight years after it is made. The expiry of a SPP can be extended to 12 years to cater for expiry during election periods or machinery of government changes. A temporary SPP, lasting one year, can be made to address an urgent state interest.

**What is the relationship with other planning instruments?**

A SPP prevails over a local planning instrument to the extent of any inconsistency. If a SPP is inconsistent with a state planning regulatory provision or a regional plan, the state planning regulatory provision or regional plan prevails.

## Standard planning scheme provisions

**What are standard planning scheme provisions?**

The standard planning scheme provisions (SPSP) is an instrument that advances the purpose of the Act by providing for a consistent structure for planning schemes and standard provisions for implementing integrated planning at the local level.

The SPSP will be progressively reflected in local government planning schemes as new schemes are made under the Act. Existing *Integrated Planning Act 1997* planning schemes are not required to be consistent with the SPSP. New planning schemes made under the Act must be updated to reflect changes to the SPSP made over time.

**What are the key elements of the standard planning scheme provisions?**

The SPSP will contain both mandatory and non-mandatory parts and will outline mandatory structure, format, standard use and administrative definitions, a suite of standard zones and codes, limited prescribed levels of assessment and a suite of standard overlays. This change is intended to overcome the complexity, uncertainty and inconsistency associated with many local planning schemes.

**What is the relationship with other planning instruments?**

SPSP prevail over local planning instruments made under the Act, to the extent of any inconsistency. SPSP do not regulate or affect development in their own right—they only have effect once they are incorporated into a local planning instrument. However, if a local planning instrument is inconsistent with the SPSP, the SPSP takes effect in place of the local planning instrument to the extent of the inconsistency.

## Making, amending, repealing state planning instruments

The Act introduces a single, streamlined and performance-based process for making, amending and repealing all state planning instruments, including the standard planning scheme provisions.

**How is a state planning instrument made?**

The process for making a state planning instrument (including an amendment of a state planning instrument) may be summarised as:

1. preparation of a draft state planning instrument

2. notification and public consultation by the Minister who prepared the draft state planning instrument (unless the draft state planning instrument is a temporary state planning policy, or a minor or administrative amendment of a state planning instrument)
3. consideration of submissions
4. possible preparation of a modified instrument in response to submissions
5. adoption of the state planning instrument or decision not to proceed
6. notification of the adoption or decision not to proceed
7. copies of state planning instrument to be given to the relevant local governments
8. particular state planning regulatory provisions to be tabled in the legislative assembly.

**How is a state planning instrument amended?**

The process for amending state planning instruments is similar to the process above. However, the consultation period is reduced in some cases or, in the case of minor or administrative amendments, does not apply at all.

**How is a state planning instrument repealed?**

The process for repealing state planning instruments can be summarised as:

- a decision is made by the planning Minister to repeal the state planning instrument. If the state planning instrument was made jointly by two Ministers, the decision to repeal the instrument must be jointly made by both Ministers. Note that a regional plan cannot be repealed, only replaced
- notification of the repeal in the gazette and a newspaper
- copies of the notice of repeal must be given to the relevant local governments.

# 3. Local planning instruments

A local planning instrument is any of the following:

- a planning scheme
- a temporary local planning instrument
- a planning scheme policy

## Planning scheme

**What is a planning scheme?**

A planning scheme is an instrument made by a local government that advances the purposes of the Act by providing an integrated planning policy for the local government's planning scheme area.

**Who can make a planning scheme?**

Planning schemes are made by local governments. The Minister also has powers to make and amend planning schemes.

**How long does a planning scheme last?**

Local governments must review their planning schemes every ten years. Planning schemes should be based on a 20 year planning horizon and, in local government areas with a regional plan, updated after the regional plan is updated.

**What are the key elements and core matters of a planning scheme?**

A planning scheme must:

- appropriately reflect the standard planning scheme provisions (note: this does not apply for an IPA planning scheme)
- identify the strategic outcomes for the planning scheme area
- include measures that facilitate achieving the strategic outcomes
- coordinate and integrate the matters, including the core matters, dealt with by the planning scheme, including any state and regional dimensions of the matters
- include a priority infrastructure plan
- if land in the planning scheme area is a declared master planned area, include a structure plan for the master planned area.

Each of the following are core matters for the preparation of a planning scheme:

- land use and development
- infrastructure
- valuable features.

**What is the relationship with other planning instruments?**

If a planning scheme is inconsistent with a state planning instrument, the state planning instrument prevails to the extent of the inconsistency. If a planning scheme is inconsistent with a planning scheme policy, the planning scheme prevails to the extent of the inconsistency.

**What is the relationship between planning schemes and the Building Act?**

A planning scheme must not deal with building work to the extent the building work is regulated under the building assessment provisions under the *Building Act 1975* (Building Act) unless permitted under the Building Act. The Act therefore makes it clear that planning schemes must not be inconsistent with the requirements of the Building Act—that is, they must not address matters already addressed by the building assessment provisions, unless permitted under the Building Act through provisions such as sections 32 and 33 of the Building Act.

To the extent that a planning scheme deals with building work regulated under the building assessment provisions, it is of no effect. This applies to existing and new planning schemes.

**What is the process for applying a superseded planning scheme?**

If an applicant wants a superseded planning scheme to apply to development, the applicant must make a request to the local government who will determine if their request will be granted. A request to apply a superseded planning scheme must be made within one year of the new or amended planning scheme taking effect.

## Temporary local planning instrument

**What is a temporary local planning instrument?**

A temporary local planning instrument (TLPI) is an instrument made by a local government that advances the purpose of the Act by protecting a planning scheme area from adverse impacts.

**Who can make a temporary local planning instrument ?**

Local governments have the power to make a TLPI. However, a TLPI can only be made if the planning Minister is satisfied that:

- there is a significant risk of serious harm happening in the planning scheme area
- the delay involved in amending the planning scheme would increase the risk
- state interests will not be adversely affected by the proposed TLPI
- the proposed TLPI appropriately reflects the standard planning scheme provisions.

The planning Minister can also make a TLPI.

**How long does a temporary local planning instrument last?**

A TLPI can be in place for up to one year.

**What is the relationship with other planning instruments?**

If a TLPI is inconsistent with a state planning instrument, the state planning instrument prevails to the extent of any inconsistency. A TLPI may suspend or otherwise affect the operation of a planning scheme, but does not amend the planning scheme.

## Planning scheme policy

**What is a planning scheme policy?**

A planning scheme policy is an instrument that:

- supports the local dimension of a planning scheme
- supports local government actions under the Act for the integrated development assessment system (IDAS) and for making or amending planning schemes.

Planning scheme policies are intended to support the scheme. Substantive planning policies should be contained within the planning scheme itself.

**Who can make a planning scheme policy?**

Local governments have the power to make a planning scheme policy for all or part of its planning scheme area. The planning Minister can also make or amend a planning scheme policy.

**What is the relationship with other planning instruments?**

Where a planning scheme policy and any other planning instrument deals with the same matter in an inconsistent way, the other planning instrument will prevail over the planning scheme policy to the extent of the inconsistency.

## Making, amending or repealing a local planning instrument

**What is the process for making and amending local planning instruments?**

The processes for making and amending local planning instruments under the Act are included in a statutory guideline made by the planning Minister. However, the Act identifies some basic guarantees for effective notification of the local planning instrument (where applicable) and the planning Minister's approval of new planning schemes.

The movement of the processes for making and amending local planning instruments to a statutory guideline will enable more flexibility in changing the process, to ensure that plan-making is continuously improved.

**How can local planning instruments be repealed?**

A planning scheme cannot be repealed—it can only be replaced by another planning scheme.

A temporary local planning instrument can be repealed in two ways:

- by a local government resolution (note that in some cases, the planning Minister's agreement is required)
- by making or amending a planning scheme which specifically repeals the temporary local planning instrument.

A planning scheme policy can be repealed in two ways:

- by a local government resolution
- by making a new planning scheme policy which specifically repeals the planning scheme policy.

**What are the Ministerial powers to make, amend or repeal a local planning instrument?**

The planning Minister has the power to direct a local government to take an action in relation to a local planning instrument, including:

- review a planning scheme
- make or amend a planning scheme
- make or repeal a temporary local planning instrument
- make, amend or repeal a planning scheme policy.

This power can only be exercised to protect or give effect to a state interest or to ensure a local planning instrument reflects the standard planning scheme provisions. If the local government does not comply with a direction described above, the planning Minister can undertake the action.

The planning Minister also has the power to make or amend a local planning instrument without first giving a direction to the local government if urgent action is necessary to protect or give effect to a state interest, or if a local planning instrument made under the Act does not reflect the standard planning scheme provisions.

# 4. Designation of land for community infrastructure

Chapter 5 of the Act relates to the setting aside of land for community uses, such as educational facilities and recreational areas.

**Who can designate land?**

A Minister (any Minister of the state) or a local government may designate land for community infrastructure. Therefore, there are essentially two types of designations—Ministerial designations and local government designations.

**What is community infrastructure?**

A list of community infrastructure will be set out in the regulation.

The state Minister or a local government may designate land for community infrastructure that exists or that the state or local government or another entity intends supplying. The key feature of this designation is that the infrastructure must be for community infrastructure. It is not necessary that the infrastructure be publicly owned.

**What matters must be considered when designating land for community infrastructure?**

There are four public benefit criteria that must be considered in order for land to be designated for community infrastructure. At least one of these criteria must be satisfied. They are concerned with:

- environmental protection or ecological sustainability
- efficient allocation of resources
- satisfying statutory requirements or budgetary commitments of the state or local government
- the community's expectations for the efficient and timely supply of infrastructure.

**How does the Integrated Development Assessment System apply to designated land?**

Development under a designation is exempt development if it is:

- self-assessable development, development requiring compliance assessment assessable development under a planning scheme
- reconfiguring of a lot.

**How is land designated?**

Land can be designated in two ways—ministerial and local government.

1. Ministerial designations

Before designating land, the state Minister must be satisfied that:

- adequate environmental assessment has been carried out
- there has been adequate public consultation
- adequate account has been taken of issues raised during consultation.

After designating the land, the state Minister must give notice of the designation to each owner of the land, each affected local government and the chief executive of the Department of State Development, Infrastructure and Planning. The state Minister must also publish a gazette notice.

2. Local government designations

A local government may only designate land by following the process for making or amending a planning scheme.

**How long does a designation last?**

Generally, the designation ends after six years. Exceptions to this rule are set out in section 215 of the Act.

**How are designations repealed?**

A designation may be repealed by publishing a notice of repeal in the gazette and in a newspaper circulating generally in the area. Copies of the notice may also be required to be given to each affected local government and the owner of the land.

**How is land acquired for designation?**

The owner of the land may ask the designator to buy the land if the owner is suffering hardship because of the designation.

# 5. Integrated Development Assessment System

Chapter 6 of the Act establishes the Integrated Development Assessment System (IDAS). IDAS has been a key feature of Queensland's planning and development assessment system since 1998. IDAS is in many senses the centrepiece of this integrated system. It links integrated policies expressed through a range of planning instruments with real outcomes through a flexible, responsive and accountable performance-based development assessment system.

**Key characteristics**

The key characteristics of IDAS are:

- comprehensive—IDAS covers approvals for almost all development in Queensland (including Queensland waters). The exceptions include approvals for mining and petroleum-related activities (which are decided under the *Environmental Protection Act 1994*) and development in certain locations, such as priority development areas under the *Economic Development Act 2012*. The broad scope of the definition of development (see sections 7 and 10) means that IDAS covers the broadest possible range of development. This approach is necessary if a truly integrated approach to development assessment is to be achieved
- scaleable—IDAS is capable of applying at any scale of development from minor works (for example a vehicle crossing or pergola) to complex, major staged proposals such as master planned communities
- modular—IDAS consists of four basic stages which are modular in character. Not all stages apply to all development applications. A simple application may involve only two stages (application and decision), whereas a more complex proposal may involve four stages (application, information and referral, notification and decision). IDAS also involves the compliance stage. For developments requiring compliance assessment only, this will be the only stage that applies to the application

- performance-based—IDAS is a performance-based development assessment system. It effectively establishes a right for a person to bring forward any proposal and have it tested against the policy benchmarks set under the planning instruments, structure plans and master plans and other policy benchmarks. Proposals that comply will generally be approved. However, the Act does introduce limited prohibitions and prevents applications from being made in respect of this prohibited development
- balanced—IDAS balances the need for effective and timely approvals with the rights of the community to be informed and to comment on key proposals. IDAS includes checks and balances to ensure any obligations imposed on participants are balanced with rights of redress. For example, the capacity for an assessment manager to seek further information in support of an application is balanced with the right of applicants to provide some or none of the information and seek a final decision. This ensures any disputes about the adequacy of the information can be independently arbitrated through an appeal or review process
- accountable—IDAS includes accountabilities on all participants to ensure the process is timely, transparent and fair. All processes under the Act have clear end points specified with a right of appeal or review attached.

**Who is involved in IDAS?**

IDAS involves the following key stakeholders:

- applicant—the applicant is the person that makes the development application
- assessment manager—the assessment manager is usually from the local government that administers the planning scheme for the planning scheme area. In some circumstances, the assessment manager may be a state government agency
- referral agency—a referral agency is usually a state government agency that an application is referred to as the application may have an impact on a state interest. There are two types of referral agencies: concurrence agencies and advice agencies.

- concurrence agencies are usually state government agencies that have powers to direct the decision about the application
- advice agencies are usually a state government agency that an application is referred to for advice only. Advice agencies cannot direct the decision about the application.

**What are the categories of development?**

The categories of development outlined in the Act are:

- exempt development—all development is exempt, unless it is falls within one of the other categories listed below. A development permit is not necessary for exempt development
- self-assessable development—a development permit is not necessary for self-assessable development, however it must comply with any applicable codes
- compliance assessment—a compliance permit is required for development requiring compliance assessment
- assessable development—a development permit is required for assessable development. Assessable development may require impact assessment, code assessment or both
- prohibited development—an application for a development approval or a request for compliance assessment cannot be made for prohibited development.

To determine which category of development applies to a particular type of development, it is necessary to have regard to:

- schedule 1 (prohibited development) of the Act
- the regulation made under the Act
- State planning regulatory provisions
- planning schemes (including structure plans)
- temporary local planning instruments
- preliminary approvals that affect a planning scheme under section 242 of the Act
- master plans.

**What are the stages of the Integrated Development Assessment System?**

IDAS involves the following stages:

1. application stage
2. information and referral stage
3. notification stage
4. decision stage
5. compliance stage.

## Application stage

**What is a properly made application?**

Each development application must be properly made, that is, it must:

- be made to the assessment manager
- be in the approved form or made electronically using Smart e-DA
- be accompanied by any mandatory supporting information specified on the approved form
- be accompanied by the required fee
- include the owner's consent if required under section 263.

If the application is not properly made, the assessment manager must give the applicant a notice stating that the application is not properly made and telling the applicant how to fix the application. The application cannot be accepted by the assessment manager if it is not properly made.

However, recent changes provide some flexibility in the requirements for mandatory supporting information accompanying a development application. The mandatory supporting information may not always add value to the assessment of every development application and may therefore be unnecessary for some applications. The assessment manager is now able to apply discretion to accept development applications which have sufficient information for assessment as being properly made.

If the application is properly made, the assessment manager must give the applicant an acknowledgment notice unless:

- the application requires code assessment only

- there are no referral agencies or the referral agencies do not require the application to be referred to them.

## Information and referral stage

**What is involved in the information and referral stage?**

The information and referral stage involves the following steps:

1. Applicant gives each referral agency a copy of the application and other material specified in section 272 of the Act—note that an application may lapse if this material is not supplied.
2. The assessment manager and each concurrence agency may ask the applicant to give further information through an information request.
3. The applicant responds to the information request by giving all or only some of the information requested, or refusing to give the information requested—note that an application may lapse if a response is not given.
4. The referral agency assesses the application and gives its response to the assessment manager.

## Notification stage

**Why is there a public notification stage?**

The public notification stage ensures that the public is aware of the development and gives them the opportunity to make submissions about the development. By making a submission, members of the public can secure the right to appeal to the Planning and Environment Court about the assessment manager's decision.

**When is public notification required?**

The notification stage only applies for:

- an application for development requiring impact assessment or
- an application to which section 242 of the Act applies (i.e. an application for a preliminary approval that affects a planning scheme).

**When can notification stage start?**

Commencement of the notification stage depends on whether or not an information request has been given. If there are no concurrence agencies and the assessment manager has stated in the acknowledgement notice that it does not intend to make an information request, public notification may start as soon as the acknowledgement notice is given.

If no information requests have been made, the applicant may start the notification period as soon as the last information request period ends.

If an information request has been made, the applicant may start the notification period as soon as the applicant gives all information request responses and copies to the assessment manager.

**What are the requirements for public notification?**

The applicant (or the assessment manager on behalf of the applicant) must:

- publish a notice in a newspaper circulating generally in the locality of the land
- place a notice on the land in the way prescribed under a regulation
- give a notice to the owners of all adjoining land.

The notification period for applications is generally at least 15 business days. A minimum period of 30 business days applies if:

- there are three or more concurrence agencies
- the development is assessable under a planning scheme and prescribed under a regulation
- the application is for a preliminary approval under section 242 of the Act (i.e. a preliminary approval that overrides a planning scheme).

The applicant is required to give the assessment manager two notices during the notification stage to advise the assessment manager of the progress of public notification. These notices must be given within:

- five business days of giving public notice of the application
- 20 business days after the notification period ends.

## Decision stage

**When does the decision stage start?**

If an acknowledgement notice is required for an application, the decision stage starts the day after all other stages (other than the compliance stage) have ended.

In all other cases, the decision stage starts the day the applicant responds to the information request (if an information request was made) or the day the properly made application was received (if an information request has not been made).

**What type of assessment is required?**

Assessable development may require code assessment, impact assessment or both. Particular assessment rules apply for preliminary approvals to which section 242 of the Act applies.

- code assessment—if an application (or part of an application) requires code assessment, the application must be assessed against the matters specified in section 313 of the Act. This includes:
  - any state planning instruments
  - any applicable codes in a planning instrument, other legislation, a master plan or a preliminary approval to which section 242 applies
  - impact assessment—if an application (or part of an application) requires impact assessment, the application must be assessed against any state planning instruments, local planning instruments, master plans or preliminary approvals to which section 242 applies
  - preliminary approval to which section 242 applies—for applications for these types of preliminary approvals, the assessment manager must firstly assess the proposed development using the code assessment rules or impact assessment rules, whichever is applicable. Once this assessment has been carried out, the assessment manager must then consider the proposed variation to the local planning instrument.

**What is the timeframe for assessing the application?**

Applications must be decided within 20 business days after the day the decision stage starts, unless this timeframe is extended by the assessment manager. The assessment manager may extend this timeframe without the applicant's agreement but not more than 20 business days. Any further extensions must be agreed between the applicant and the assessment manager.

**How are applications decided?**

In deciding an application, the assessment manager must:

- approve all or part of the application
- approve all or part of the application with conditions
- refuse the application.

If a concurrence agency has given a response about an application, the assessment manager is bound by that response. This means that the assessment manager must, for example, refuse the application if so directed by the concurrence agency, or impose conditions required by the concurrence agency.

The assessment manager's decision must not be inconsistent with a state planning regulatory provision. The assessment manager's decision also must not be inconsistent with a relevant instrument (that is, an instrument listed in sections 313(2) or 314(2), other than a state planning regulatory provision), unless:

- the conflict is necessary to ensure the decision complies with a state planning regulatory provision
- there are sufficient grounds to justify the decision despite the conflict
- the conflict arises because of a conflict between:
  - two or more relevant instruments of the same type and the decision best achieves the purpose of the instruments
  - two or more aspects of any one relevant instrument and the decision best achieves the purposes of the instrument.

The assessment manager is required to give a decision notice to the applicant within five business days of deciding the application.

**What are deemed approvals?**

The deemed approval provisions in the Act apply to both state and local government assessment managers. If an assessment manager does not decide an application requiring code assessment within the decision-making period (including any extension of the period), the applicant may give the assessment manager a deemed approval notice.

A deemed approval notice cannot be given for an application requiring impact assessment. Other exemptions from the deemed approval provisions are set out in section 330 of the Act.

The assessment manager is taken to have approved the application on the day the deemed approval notice is received.

If the applicant applies for a preliminary approval, the deemed approval will be taken to be a preliminary approval. If the applicant applied for a development permit, the deemed approval will be taken to be a development permit. The assessment manager has no discretion to issue only a preliminary approval, unless a concurrence agency has directed the assessment manager to give a preliminary approval only.

**Can the assessment manager impose conditions on a deemed approval?**

Once an application is deemed to have been approved, the assessment manager has an opportunity to issue a decision notice, imposing conditions on the approval. If the assessment manager does not give a decision notice within 10 business days of receiving the deemed approval notice, standard conditions made by the planning Minister will apply to the approval.

**What happens if a concurrence agency directs a refusal or requires conditions to be imposed?**

If a concurrence agency directs a refusal, the applicant cannot give a deemed approval notice to the assessment manager. If a concurrence agency requires conditions to be imposed and the application is deemed to have been approved, the concurrence agency's conditions will automatically apply to the deemed approval, regardless of whether the assessment manager issues a decision notice.

## Dealing with applications and approvals

**How can development applications be changed once the IDAS process has commenced?**

The Act contains a simplified, flexible process for changing applications. If the change is a minor change, IDAS does not stop and the notification stage (if applicable) does not have to be repeated or re-started. Changes can also be made to applications to deal with matters raised in submissions or information requests. Again, IDAS does not stop, however re-notification is required unless the assessment manager is satisfied the change would not be likely to attract an objection.

For all other changes, IDAS must be re-started from the acknowledgement period.

**How does the Act deal with missed referrals?**

The Act contains a process for dealing with missed referrals. In summary, if a missed referral is identified, IDAS does not stop. However, a decision cannot be made until the missed referral agency has had an opportunity to assess the application and provide a response.

**How does the Act deal with changing approvals?**

During the applicant's appeal period, the applicant may negotiate with the assessment manager about the decision notice or deemed approval. If the assessment manager agrees with the representation, they must give the applicant a new decision notice, called a negotiated decision notice.

The Act also contains a simplified, flexible process for changing approvals after the applicant's appeal period ends (see chapter 6, part 8, division 2 of the Act).

## Compliance stage

**What is the compliance stage?**

A new compliance assessment process and a compliance stage have been included in the Act. The compliance stage means that certain developments, documents or work will need to be assessed for compliance with criteria specified in an instrument such as

a regulation, planning instrument, master plan or preliminary approval to which section 242 applies.

The compliance assessment process enables these types of developments to be dealt with under IDAS more simply and effectively without compromising the benefits of integrated development assessment. Compliance assessment will provide a quick process for purely technical issues.

Compliance assessment is suitable for development for which:

- clear technical standards are available
- the exercise of broad discretion in determining compliance is unnecessary
- integrated referral arrangements are unnecessary.

If development complies with the compliance standards, a compliance permit will be issued.

There are certain actions arising from previous approvals that require compliance assessment. For example, compliance assessment may be used for completed works or documents such as management plans, required under the conditions of an approval. If the document or works comply with the compliance standards, a compliance certificate will be issued.

**Who is the compliance assessor?**

The compliance assessor is responsible for assessing the development, document or works. The compliance assessor may be the local government or an entity nominated by the local government or a state agency.

**What is the compliance assessment process?**

The compliance assessment process involves the following steps:

1. A person makes a request for compliance assessment to the compliance assessor.
2. The compliance assessor assesses and decides the request.
3. If the development, document or work complies with the relevant standards, the compliance assessor gives the person a compliance permit (for development) or a compliance certificate (for document or works).

4. If the development, document or work does not comply, the compliance assessor gives the person an action notice telling them how to fix the problem to ensure the development is compliant. The person can then re-submit their request for compliance assessment.

A request for compliance assessment cannot be refused and will be deemed to be approved if not decided within the timeframes prescribed in a regulation. The compliance assessment process allows for limited referrals to local governments, in circumstances where the compliance assessor is an entity nominated by the local government.

## Ministerial IDAS powers

**What powers of direction does the planning Minister have in the IDAS process?**

The planning Minister has reserve direction powers to ensure that IDAS processes and timeframes are generally adhered to. This intent is to deliver efficient and effective assessment. The planning Minister can give directions to assessment managers, concurrence agencies and applicants to achieve these goals.

The planning Minister can direct an assessment manager to:

- refer specific development applications to the planning Minister
- decide or not to decide a development application
- decide development applications within a stated period if the application is not decided within the decision-making period
- decide a development application within the decision-making period, if the development involves a state interest
- give a negotiated decision notice, if representations have not been decided
- take an action under IDAS within a reasonable period if the assessment manager has not complied with the period
- take an action under IDAS within a reasonable period if the development involves a state interest
- attach conditions to a development approval.

The planning Minister can direct a concurrence agency to:

- change its response (if two agencies give conflicting responses)
- re-issue its response
- take an action under IDAS within a reasonable period.

The planning Minister can direct an applicant to take an action to ensure compliance with IDAS.

**Who has Ministerial call in powers?**

The following Queensland Minister's have the power to call in development applications:

- the planning Minister
- the regional planning Minister
- the Minister administering the *State Development and Public Works Organisation Act 1971*.

A development application can only be called in if it involves a state interest.

**What is the process following a Ministerial call in?**

After calling in a development application, the Minister who called in the application can do the following:

- assess and decide the application in the place of the assessment manager or
- direct the assessment manager to assess the application, and then the Minister decides the application.

The Minister is required to follow the IDAS process, however the Minister can elect (in the call in notice) to assess and decide the application having regard only to the state interest for which the application was called in.

There is no right of appeal against the Minister's decision, however the Minister must table a report in Parliament about the decision.

# 6. Appeals, offences and enforcement

Chapter 7 of the Act deals with the jurisdiction and procedures of the Planning and Environment Court and the Building and Development Dispute Resolution Committee (building and development committee). This chapter also contains provisions dealing with development offences and the enforcement mechanisms available to address them.

Many of the provisions mirror those contained in IPA. However, the Act also:

- expands the discretionary powers of the court to award costs against commercial competitors and to determine whether a matter of procedural non-compliance can be excused
- changes the name of the Building and Development Tribunal to the Building and Development Dispute Resolution Committee
- expands the jurisdiction of the building and development committee
- allows for appeals, offences and enforcement to facilitate the introduction of compliance assessment
- gives assessing authorities a broader discretion to proceed directly to issuing an enforcement notice, without first issuing a show cause notice
- gives the court discretion to award costs, taking into consideration such matters as public interest, commercial interests, consistency with decision rules of development assessment and behaviour of a party during proceedings.

The Act improves community access to dispute resolution by providing three levels of dispute resolution:

- free Alternate Dispute Resolution through the Planning and Environment Court
- low cost access to the building and development committee
- the existing Planning and Environment Court.

The Act also allows the Planning and Environment Court the discretion to direct the Alternative Dispute Resolution registrar to hear and decide minor disputes and routine procedural applications. This is on the basis that each party will bear their own costs. This means that development matters which are relatively straight-forward disputes can be resolved quickly, cheaply and effectively.

## Planning and Environment Court

**What matters can the Planning and Environment Court hear?**

The Planning and Environment Court can:

- make declarations and orders about matters under the Act and the construction of the Act and planning instruments, master plans and guidelines under the Act
- hear appeals about development applications and approvals
- hear appeals about compliance assessment
- hear appeals about master plans
- review a decision of the building and development committee
- hear appeals about other matters e.g. enforcement notices, compensation claims and infrastructure charges.

**What is the procedure for making an appeal?**

An appeal is started by lodging notice of the appeal with the registrar of the Planning and Environment Court stating the grounds of appeal. The notice of appeal must also be given to other relevant parties.

## Building and Development Dispute Resolution Committee

**What matters can the Building and Development Dispute Resolution Committee hear?**

The Building and Development Dispute Resolution Committee can:

- make declarations about whether an application is properly made
- make declarations about acknowledgement notices for applications for residential-type developments
- make declarations about whether requests for compliance assessment have lapsed

- make declarations about whether a change to a development approval for a residential-type development is a permissible change
- hear appeals about certain development applications and approvals (building works and residential-type developments)
- hear appeals about compliance assessment
- hear appeals about building, plumbing and drainage matters, enforcement notices and infrastructure charges.

**What is the procedure for a declaration or an appeal?**

To commence proceedings, an application for a declaration or a notice of appeal must be lodged with the registrar of the building and development committee.

## Offences, notices, orders

**What is an offence under the Act?**

The Act sets out a number of offences, including:

- carrying out development without a compliance permit or development permit
- failure to comply with a development approval, compliance permit, compliance certificate or master plan
- carrying out prohibited development.

The Act prescribes maximum penalties for each of these offences. The Act also provides for some exemptions, including carrying out emergency development to prevent danger to life or to ensure the structural adequacy of a building.

**What enforcement mechanisms are available under the Act?**

Enforcement mechanisms available under the Act include:

- show cause notices
- enforcement notices
- enforcement proceedings in the Magistrates Court and the Planning and Environment Court.

**When can show cause notices and enforcement notices be given?**

A show cause notice may be given where an assessing authority reasonably believes a person has committed or is committing a development offence. Generally, a show cause notice should be given before issuing an enforcement

notice, however the assessing authority may proceed directly to issuing an enforcement notice if it reasonably considers it is not appropriate in the circumstances to give the show cause notice. For example, the assessing authority may consider urgent action is necessary to address a danger to public health or safety.

An enforcement notice is a notice telling a person to stop committing an offence or to remedy the commission of an offence. It is an offence to fail to comply with an enforcement notice. Fines of up to $166 500 can be imposed.

**Who can take proceedings to the Magistrates Court?**

Any person may bring proceedings in a Magistrates Court to prosecute another person for an offence.

**Who can take proceedings to the Planning and Environment court?**

Any person can bring proceedings in the Planning and Environment Court to stop the commission of an offence.

# 7. Infrastructure

Chapter 8 establishes an integrated approach for the supply of infrastructure. It establishes mechanisms for funding users pays infrastructure, that is, infrastructure for which an end user can be readily identified, while at the same time encouraging an integrated approach to infrastructure planning, land use and development decision-making.

## Infrastructure planning and funding

**What types of infrastructure are outlined in the Act?**

There are two types of infrastructure:

- trunk infrastructure—infrastructure that provides distribution and collection services for a catchment area larger than the development (e.g. water and sewerage)
- non-trunk infrastructure—infrastructure that connects a building to the trunk infrastructure.

**What are priority infrastructure plans?**

Local governments plan for the supply of trunk infrastructure through priority infrastructure plans (PIP). Local government planning schemes must include a PIP. The process for making a PIP is set out in a guideline made by the planning Minister.

**How is infrastructure paid for?**

Charges for trunk infrastructure may be levied under the following instruments:

- infrastructure charges schedule—this schedule sets out the cost of the infrastructure and the proportion of the cost to be funded by an infrastructure charge by a development. The process for making an infrastructure charges schedule is set out in a guideline made by the planning Minister. A local government may give a person an infrastructure charges notice requiring the payment of an infrastructure charge

- regulated infrastructure charges schedule—this schedule is set out in a regulation or a state planning regulatory provision. Local governments can choose to adopt the schedule or develop their own. A local government may give a person a regulated infrastructure charges notice requiring the payment of a regulated infrastructure charge.

Local governments may impose conditions for necessary trunk infrastructure and additional trunk infrastructure costs.

Parties can enter into infrastructure agreements about infrastructure to be provided or paid for (see chapter 8, part 2 of the Act).

**How is state infrastructure in master planned areas funded?**

A structure plan or a state planning regulatory provision can outline the regulated state infrastructure charges schedule for a master planned area. The relevant state infrastructure provider may give a regulated state infrastructure charges notice requiring the payment of a regulated state infrastructure charge.

**How can a charges notice be changed?**

If an applicant disagrees with a notice about a charge for infrastructure, there are two options:

- negotiate with the entity that gave the notice. If the entity agrees to a change, it must issue a negotiated notice
- appeal against the amount of the charge to the Planning and Environment Court or the Building and Development Dispute Resolution Committee.

# 8. Miscellaneous

Chapter 9 deals with a number of miscellaneous issues, including protecting existing uses and rights, requirements for environmental impact statements, compensation rights and public access to planning and development information.

## Existing uses and rights protected

**How does the Act affect existing lawful use of premises?**

The Act does not affect an existing lawful use of premises i.e. a use that was lawful prior to the commencement of the Act.

In addition, new planning instruments cannot affect:

- an existing lawful use of premises
- a lawfully constructed building
- an existing development approval or compliance permit.

## Environmental impact statements

**When is an environmental impact statement (EIS) required?**

The EIS process applies to development prescribed under a regulation if the development is the subject of a development application, a proposed community infrastructure designation or a master plan application.

The EIS process involves the following steps:

1. The applicant applies to the chief executive of the Department of Infrastructure and Planning for terms of reference.
2. The chief executive must publicly notify and finalise terms of reference for an EIS.
3. The applicant must prepare and publicly notify a draft EIS.

4. The chief executive must evaluate the draft EIS and prepare a report outlining key areas that must be addressed.

## Compensation

**When can a claim for compensation be made?**

A right to compensation arises where:

- there is a change to a planning scheme or planning scheme policy
- this change reduces the value of an interest in land
- a request is made to apply a superseded planning scheme and the request is refused
- when any of the following occur:
  - any subsequent development application is refused
  - any subsequent development application or request for compliance assessment is approved with conditions
  - the proposed development is prohibited under the new planning scheme and so a development application or request for compliance assessment cannot be made.

There are some limitations on compensation (see section 706 of the Act). For example, compensation is not payable where:

- another statutory instrument changes the planning scheme and there is no compensation under this other statutory instrument
- the standard planning scheme provisions require a local government to include part of the standard planning scheme provisions in its planning scheme.

## Public access to planning and development information

**What information does the public have access to?**

Certain planning and development information specified in the Act must be kept available for the public. Some documents are to be kept for inspection and purchase, and some are to be kept for inspection only.

Entities which are required to keep information available include:

- local governments
- assessment managers
- referral agencies
- the chief executive
- compliance assessors.

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