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Environmental Defenders Office

*Using the law to protect
our environment.*

Development Approvals

This Factsheet is for general information purposes and is not legal advice. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your particular circumstances you should contact the EDO or your solicitor.

Factsheet 6

This factsheet describes the development assessment process under the Sustainable Planning Act 2009 (“SPA”).

Factsheets in this series:

- 1 An introduction to the SPA*
- 2 Ecological sustainability: the purpose of SPA*
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SUMMARY

Development is defined under the SPA to include virtually all new or changed activities on land, including building and use.

Development can include building, plumbing, drainage or operational work, reconfiguring a lot or a material change in use.

Development is only regulated by a public authority if it is made assessable, or self assessable under Schedule 3 of the *Sustainable Planning Regulation 2009* (“**SPR**”) or a planning scheme. SPA has introduced a new category of assessment known as compliance assessable under Schedule 18 and 19 of the SPA.

Much development will be permissible on the basis that it complies with a code. The building code is one example of a code, but others can be introduced as part of a planning scheme or by a State government body.

Development will be assessed through a separate process to the one outlined in this factsheet in two instances:

- When the Coordinator General declares a project to be a significant project under Part 4 of the *State Development and Public Works Organisation Act 1971* (Qld); or
- When an area is declared an Urban Land Development Area under the *Urban Land Development Authority Act 2007* (Qld).

The SPA establishes five categories of development.

- **Exempt development** is specified in the SPR or planning schemes. It does not require a development permit and need not comply with the codes or planning scheme. Some development activities are automatically exempt from assessment under SPA including mining, forestry and some agricultural activities (other laws control these types of development).
- **Self assessable development**, as specified in Schedule 3 of the SPR or a planning scheme, does not require a development permit but must comply with applicable codes.
- **Development requiring compliance assessment**, as specified in Schedule 18 and 19 of the SPR or planning scheme, is development that is assessed for compliance with the relevant criteria. Compliance assessment will result in the issuance of a compliance permit.
- **Assessable development:**
 1. **Assessable development – code assessment:** the development is assessed against applicable codes and other relevant instruments by a public authority or an assessor. A development permit is required but applications do not have to be notified publicly and members of the public generally cannot object (make formal submissions) on the development application and have these considered.
 2. **Assessable development - Impact assessment:** the development is assessed against the planning scheme and its broader environmental effects. A development permit is required. The public must be notified of the development

application and rights of submission (objection) and third party appeal are specified.

- **Prohibited Development**, as specified in Schedule 1 of the SPA or planning scheme, is development that is not allowed to be undertaken. Some prohibited development activities under SPA include specified works in a wild river area.

How do I know what category a development comes under?

Schedule 3 of the SPR defines certain types of development as assessable as well as specifying whether it is code or impact assessable. The planning scheme for the area in question should specify which developments are impact assessable. REMEMBER, you can be involved in the process for the preparation of planning schemes (see *factsheet 5*).

Preliminary approvals can vary the affect of planning scheme requirements on the level of assessment or the applicable codes in some circumstances. Essentially this means that the preliminary approval will prevail where there is inconsistency between the approval and the planning scheme.¹

The SPA establishes an **Integrated Development Assessment System (IDAS)** in which applications are received by assessment managers (usually the local Council) and referred if necessary to other interested agencies.

Concurrence agencies can offer advice, request further information from an applicant and direct refusal or conditional approval of a development application. **Advice agencies** may only provide advice.

Certain matters must be considered by an assessment manager when assessing a development.

Applications subject to **code assessment** can be refused only if proposed developments do not comply with applicable codes and compliance can not be achieved by imposing conditions. A deemed approval for a code assessable development results if the assessment manager does not decide the application within decision making period.

Developments subject to **impact assessment** can not be approved if a concurrence agency has directed a refusal. Developments that conflict with the planning scheme can be approved if there are sufficient planning grounds to do so.

The Minister can be involved with development applications that involve a State Interest.

¹ Section 242 *Sustainable Planning Act 2009*

Applicants do not have to supply information requested by the assessment manager or concurrence agencies.

Decision makers under SPA must "seek to achieve ecological sustainability" in making decisions on impact assessable development applications (see *factsheet 2*).²

Development permits attach to the land and bind later owners.

Development Approvals

FULL TEXT

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New development assessment system

This Factsheet provides a general discussion of the development assessment process under the SPA. The SPA development assessment system described in this factsheet applies to development applications lodged on or after **18 December 2009**, all applications lodged before this date will be decided under the *Integrated Planning Act 1997* ("IPA"). *Factsheet 7* describes how to make an effective submission on a development application.

Note that assessable development that would otherwise be assessed under SPA can bypass the IDAS process in two situations:

1. Where the assessable development is declared a significant project by the Coordinator General, the *State Development and Public Works Organisation Act 1971* regulates the assessment process; AND
2. Where an Urban Land Development Authority declaration is declared over the area where the assessable development is to be undertaken. The *Urban Land Development Authority Act 2007* regulates the assessment process.

What is development?

Development is any of the following:

- carrying out building work;
- carrying out plumbing or drainage work;

² Section 4(1)(a) *Sustainable Planning Act 2009*

- carrying out operational work;
- reconfiguring a lot (subdivision); and
- making a material change of use of premises (e.g. starting a new use or recommencing an abandoned use or a material increase in the intensity or scale of the use).

The definition of development (s7 of SPA) is broad to enable the SPA system to integrate the many existing regulatory systems covering the use of land.

How is development assessed

Development under the SPA is either:

- exempt;
- compliance;
- self assessable;
- assessable; or
- prohibited.

This means that while many development activities are caught by the concept of development only some will be regulated by an authority. No consent of a council or other regulator is required for development (including building work) which is exempt (Schedule 4 of the SPR), or classified as self-assessable (Schedule 3 of the SPR), under SPR or a planning scheme.

Only development specifically set out as assessable under Schedule 3 of SPR or a planning scheme requires the formal approval of a council. Assessable development is further classified as subject to either:

- **Code Assessment**, with no public notification (generally) and no third party appeal rights; and/or
- **Impact Assessment**, with public notification and third party appeal rights.

An application requiring code assessment is assessed for compliance against relevant codes and other relevant instruments (discussion below).³ For example, an application for building work requiring code assessment would be assessed against the Standard Building Regulation, an IDAS code.

The assessment process for an application requiring impact assessment is generally more rigorous. Impact assessment means the assessment of the environmental effects of development and the ways of dealing with the effects. The application is assessed having regard to a range of matters such as the planning scheme and relevant planning scheme policies. The application must also be publicly notified, and submissions (giving rise to appeal rights) may be made on the application.

Prohibited development is the development listed in Schedule 1 of the SPA and may also include development that is declared to be prohibited by a

³ Section 313 *Sustainable Planning Act 2009*

planning scheme or a state planning regulatory provision.

Figure 5.1 - Development Assessment under the *Sustainable Planning Act 2009*

	Assessment & Compliance Requirements	Where do I look to find out what category a particular development is in?
Exempt Development	<ul style="list-style-type: none"> • A development permit is not required. • It need not comply with the codes or planning scheme. 	<ul style="list-style-type: none"> • If it is not included in SPA or planning scheme as another category of development, it is exempt. • SPA specifies some developments that will always be exempt under SPA (these developments are subject to other types of regulation): <ul style="list-style-type: none"> ○ Mining & petroleum; ○ Some agricultural activities; ○ Forestry; ○ Works permitted under specified Acts.
Self-assessable Development	<ul style="list-style-type: none"> • A development permit is not required. • The development must comply with applicable codes. It is an offence if the development does not. 	<ul style="list-style-type: none"> • Self-assessable Development is defined in section 236. • Schedule 3 of the SPR • Planning scheme for the area in issue.
Development requiring compliance assessment	<ul style="list-style-type: none"> • A compliance permit is required. • A compliance certificate is required for documents and works that require compliance assessment. • The development, document or works must comply with relevant criteria. It is an offence if the development does not.⁴ 	<ul style="list-style-type: none"> • Schedule 18 and 19 of the SPR • Development requiring compliance assessment is defined under s237 of the SPA. • Planning scheme for the area in issue.
Assessable Development: Code Assessment	<ul style="list-style-type: none"> • A development permit is required. The application must proceed through the Integrated Development Assessment 	<ul style="list-style-type: none"> • SPA defines the categories of development. SPR defines certain types of development as assessable development

⁴ Section 575 *Sustainable Planning Act 2009*

	<p>System ('IDAS'), but no requirement for public notification.</p> <ul style="list-style-type: none"> • The development is assessed only against the applicable codes and other relevant instruments. • The development decision can conflict with an applicable code if there are sufficient grounds to justify the decision given the purpose of the code. • The application can only be refused if it does not comply with the applicable code and compliance with the code cannot be achieved by imposing conditions on the development. If a concurrence agency has directed refusal, it must be refused. 	<p>as well as specifying whether it is code assessment or impact assessment.</p> <ul style="list-style-type: none"> • Section 313 of the SPA • The Planning scheme for the area in issue may also specify that a type of development is code assessable.
<p>Assessable Development: Impact Assessment</p>	<ul style="list-style-type: none"> • A development permit is required. The application must proceed through the Integrated Development Assessment System ('IDAS'), including public notification. • The development is assessed against the whole planning scheme and other relevant instruments. • The development decision can conflict with the planning scheme only if there are sufficient grounds (matters of public interest) to justify the decision. If a concurrence agency has directed refusal, it must be refused. 	<ul style="list-style-type: none"> • SPR defines certain types of development as assessable development and specifies whether it is code assessment or impact assessment. • <u>Section 314</u> of the SPA. • Planning scheme for the area in issue.

Development approvals

A **development permit** is a type of development approval. A development permit approves assessable development and allows it to proceed. It is an offence to carry out assessable development without a development permit (s578 SPA).

A **development permit** is not necessary for self assessable development or exempt development. However, self assessable development must comply with any codes applying to the development.

Example - Requirements to obtain a permit

An application is made to convert a house to a restaurant. The application involves a material change of use of premises and involves building work. The planning scheme makes the material change of use assessable development. Accordingly, the applicant must obtain a development permit. Schedule 3 of SPR specifies that the building work is assessable development so a development permit for the building work (assessed against the Standard Building Regulation) is also required.

A **compliance permit** is required for compliance assessment.

All development is deemed to be exempt development unless the SPR or a planning scheme makes it assessable, self assessable development, compliance assessable or prohibited development.

A **preliminary approval** is also a type of development approval. A preliminary approval approves assessable development but does not authorise it to start.⁵ Final detailed design of the development or other details and assessments are still outstanding, which would need to be submitted for any development permit to be issued. A preliminary approval will often be used to assist in the staging of approval, for example, a concept plan for a subdivision layout.

Examples of the use of preliminary approvals

A preliminary approval could be sought for a large mixed use development. The preliminary approval could specify development precincts, broad land use intentions and specify that future development be assessable, self-assessable or exempt development. The developer would then have certainty that the development would ultimately be approved once the detailed design was completed, and all assessing authorities were satisfied with the proposals.

It is important to be aware that preliminary approvals can override planning scheme requirements about the level of assessment or the applicable codes in some circumstances.⁶ They can also impose conditions that will apply to the subsequent development permit. If the proposal involves a material change of use (e.g. a material increase in the intensity or scale of the use⁷) a preliminary approval can set parameters for the subsequent development of

⁵ Section 241 Sustainable Planning Act 2009

⁶ Section 242 Sustainable Planning Act 2009

⁷ Section 10 Sustainable Planning Act 2009

the land. These parameters determine how subsequent proposals may proceed.

It could (subject only to limited restrictions) categorise the development or parts of it as code or impact assessable, self-assessable or exempt development or a combination of these.⁸ This could override the need for public notification or any form of assessment when the applicant is ready to proceed with the development. It could also identify any codes applying to the development, which need not be planning scheme codes and which may compromise the achievement of the Strategic Outcomes (SOs) contained in a Planning Scheme.⁹

REMEMBER, you should be careful to treat an application for a preliminary approval in the same way as a normal application, including (where applicable) making submissions and exercising your right of appeal to the Planning & Environment Court.

What are existing uses?

If the use of premises was lawful immediately prior to:¹⁰

- the commencement of the SPA;
- the commencement of a new or existing planning instrument; or
- the amendment of a planning instrument;

and there has been no **material change of use**, then in that case the SPA or the commencement or amendment of a planning instrument under the SPA cannot:¹¹

- stop the use from continuing;
- further regulate the use; or
- require the use to be changed.

Example

A car wrecking yard established prior to the introduction of planning controls in an area will remain lawful if a planning instrument is introduced which attempts to restrict that type of use.

Do subdivisions need a development approval?

Some reconfigurations of lots, e.g. amalgamation of lots, are exempt

⁸ Section 242(3) *Sustainable Planning Act 2009*

⁹ Section 242(6) *Sustainable Planning Act 2009*

¹⁰ Section 681-682 *Sustainable Planning Act 2009*

¹¹ Section 682(2) *Sustainable Planning Act 2009*

development and do not require development approval. However, most reconfigurations, e.g. subdivisions, are assessable development and require development approval (Schedule 3 of SPR).

The Integrated Development Assessment System (IDAS)

One of the much trumpeted reforms introduced under the *Integrated Planning Act 1997* was the replacement of the need to obtain numerous approvals from diverse agencies with one *Integrated Development Assessment System* (IDAS). The IDAS process has been retained under the new the SPA.

Under the IDAS all development applications are made to one assessment manager, which in most cases will be the local Council but can also be a Queensland government agency.¹² The **assessment manager** may, or in some cases must, seek the advice or approval of other agencies when assessing particular types of development applications.¹³ The IDAS system is designed to replace the need for the applicant to approach numerous agencies for separate permits, licences or other approvals. Those other agencies, in some cases, may require the development application be refused or conditions attached to any approval.¹⁴

Stages in the assessment process

Under IPA the IDAS process comprised a four stage assessment process but the introduction of SPA has seen a new stage added to the process, the compliance stage. Not all stages apply to all development applications. Note that IDAS applies to assessable development only.

For development applications subject to code assessment, the IDAS stages are:

- the application stage;
- the information and referral stage; and
- the decision stage.

For development applications subject to impact assessment, the IDAS stages are:

- the application stage;
- the information and referral stage;
- the notification stage; and
- the decision stage.

For development applications subject to compliance assessment, the compliance stage is the only stage that applies.

Further information on each of these stages is set out below.

¹² Section 246-9 *Sustainable Planning Act 2009*

¹³ Schedule 7 *Sustainable Planning Regulation 2009*

¹⁴ Section 250-252 *Sustainable Planning Act 2009*

IDAS: The application stage

Who can lodge an application?

An application can only be made by the owner of the land to which an application relates or a person who has the land owner's written consent.¹⁵

What information must a development application contain?

Every development application must be made in the approved form or made electronically.¹⁶ SPA has introduced the e-IDAS system which will allow development applications to be submitted electronically.¹⁷ The approved form:

- must include the written consent of the owner of the land or a declaration by the applicant that they have written consent from the owner;
- must require an accurate description of the land, the subject of the application;
- must show evidence of resource entitlement (where relating to a state resource); and
- must contain the mandatory supporting information outlined in the form.

Under IPA the assessment manager had the discretion to accept a development application that was not in the approved form. This discretion has now been removed under SPA.

The Department of Infrastructure and Planning has approved forms for development applications and supporting information. Copies of the forms can be found at their web site at <http://www.dip.qld.gov.au/forms-templates/sustainable-planning-act-forms-and-templates.html>.

How much does a development application cost?

Development applications vary in cost depending on:

- the type and complexity of the application; and
- to whom the application is made.

Local governments set their own fees by resolution.¹⁸

Who must be informed when a development application is lodged?

The public is only notified of the lodgement of development applications for impact assessable development. Sometimes public submissions are sought on code assessable development but no appeal rights follow. However, all

¹⁵ Section 260(1)(e)(ii) *Sustainable Planning Act 2009*

¹⁶ Section 260 (1)(b) *Sustainable Planning Act 2009*

¹⁷ Section 262 *Sustainable Planning Act 2009*

¹⁸ Section 260(1)(d)(i) *Sustainable Planning Act 2009*

applications must be kept available for inspection and purchase (s728 SPA).

Who can inspect a development application?

The application and any supporting information (other than sensitive security information) must be kept open for inspection by any person from the time the assessment manager receives the properly made application until the application is withdrawn, lapses or until the end of the last period when appeals may be made (s728 SPA).

IDAS: The information and referral stage

Referral Agencies

Once an application has been received the assessment manager may need to refer the application to various referral agencies prescribed by regulation.¹⁹

These referral agencies fall into 2 categories, advice agencies and concurrence agencies.²⁰ Advice agencies may only:

- recommend conditions; or
- recommend that the application be refused.

Concurrence agencies may:²¹

- offer advice about the application;
- request further information from the applicant;²²
- require that any approval be for only part of the development;
- require that any approval must be a preliminary approval only;
- require a different time period for lapse of the approval;
- require that the application be refused; and/or
- specify conditions that must attach to any development approval (see s287 SPA for more information).

SPA has introduced a mechanism to deal with missed referral agencies.²³

This new process allows missed referral agencies to exercise their referral powers. The applicant has 10 business days once informed of the missed referral to refer the application. The application will not lapse during this period but the timeframes for each IDAS stage will be amended depending on what stage the applicant is alerted to the missed referral.

Information Requests

If the assessment manager, or any concurrence agencies believe additional information is required to assess the application they can ask the developer to

¹⁹ Schedule 7 *Sustainable Planning Regulation 2009*

²⁰ Section 252 *Sustainable Planning Act 2009*

²¹ Section 287 *Sustainable Planning Act 2009*

²² Section 276 (1) *Sustainable Planning Act 2009*

²³ Chapter 6, Part 7 *Sustainable Planning Act 2009*

provide that information.

On receiving a request for further information the applicant must give:

- all of the information; or
- part or none of the information and ask that the assessment of the application continue (s278 SPA).

Note that the developer is under no obligation to provide any additional information.²⁴

IDAS: The notification stage

For impact assessable development applications the SPA requires that the public be notified of the development application, that a period ('notification period') be set aside for public submissions and that the submissions be considered before any decision is made on the development application.

How does a development application have to be advertised?

Development applications are advertised by a notice being:²⁵

- published at least once in a newspaper circulating within the locality of the land;
- placed on the land in the way prescribed by regulation – the requirements include a sign on each road frontage that is visible from the road (see section 16 of the SPR); and
- given to the owners of land adjoining the land.

A development application has to be publicly notified for:²⁶

- 30 business days (minimum) if:
 1. there are 3 or more concurrence agencies; or
 2. it is for a preliminary approval; or
 3. it is development listed under schedule 16 of the SPR.
- 15 business days in any other circumstance.

The public notification period:

- starts on the day after the last of the notice requirements have been completed;²⁷ and
- must not include any business day between 20 December and 5 January.²⁸

²⁴ Section 278 *Sustainable Planning Act 2009*

²⁵ s297 *Sustainable Planning Act 2009*, s16 *Sustainable Planning Regulation 2009*

²⁶ Section 298 *Sustainable Planning Act 2009*

²⁷ Section 298(1)(a) *Sustainable Planning Act 2009*

²⁸ Section 298(2) *Sustainable Planning Act 2009*

Public advertisement of a preliminary approval can replace public advertisement of a later development application

A preliminary approval may approve assessable development and may make the approved development.²⁹

- exempt development;
- self assessable;
- development requiring compliance assessment;
- assessable (requiring code or impact assessment); or
- a combination of assessable, self-assessable, exempt development or compliance assessable.

In these instances, the preliminary approval has overridden the planning scheme.

Factsheet 7 sets out how to make effective submissions on development applications.

IDAS: The decision stage

The assessment manager (usually the local Council) can decide whether to approve or refuse a development application. If a concurrence agency requires that the application be refused or conditions attached the assessment manager must refuse it or attach the conditions (see discussion above).

What must the assessment manager consider when deciding a development application?

SPA has introduced additional instruments that must be considered in the **code assessment** process. Generally these are a range of State Government instruments (such as State planning regulatory provisions) which prevail over the relevant code to the extent of any inconsistency. This has increased the scope of what was previously quite a narrow assessment. In deciding a development application requiring code assessment an assessment manager must consider (“the relevant instruments”):³⁰

- State planning regulatory provisions;
- The regional plan to the extent that it is not already included in the planning scheme
- applicable codes
- State planning policies not already included in the planning scheme or regional plan;
- the common material (see later definition);

²⁹ Section 242 *Sustainable Planning Act 2009*

³⁰ Section 313 *Sustainable Planning Act 2009*

- any development approval for, and any lawful use of, premises the subject of the application or adjacent premises;
- any referral agencies response;
- the purpose of any instrument containing an applicable code; and
- If the assessment manager is not a local government, its relevant laws and policies are applicable codes.

A deemed approval for a code assessable development results if the assessment manager does not decide the application within the requisite decision making period.³¹ This means that the application will be ‘deemed’ approved and certain conditions will attach.

In deciding a development application requiring **impact assessment** the assessment manager’s decision must advance ecological sustainability (see *Factsheet 2*) and the assessment manager must consider (“the relevant instruments”).³²

- State planning regulatory provisions;
- The regional plan (if within South East Queensland – see *factsheet 3*) to the extent that it is not already included in the planning scheme;
- if the assessment manager is not a local government, the laws and policies the assessment manager has responsibility for administering;
- State planning policies not already included in the planning scheme or regional plan;
- A structure plan;
- Master planned area;
- the common material;
- the planning scheme and any other relevant local planning instruments;
- any development approval for, and any lawful use of, premises the subject of the application or adjacent premises; and
- any referral agency’s response.

An assessment manager when deciding a development application may also give weight to a code, planning instrument or policy that came into effect after the application was made but before the decision stage started.³³

What can an assessment manager decide?

The assessment manager must refuse an application (either code or impact) for development if it is satisfied that:³⁴

- there is a conflict with the State Planning Regulatory provisions, unless there are sufficient grounds to justify the conflict;
- there is a conflict between two or more relevant instruments, unless the decision can be seen to support the purpose of the instruments; or

³¹ Section 331 *Sustainable Planning Act 2009*

³² Section 314 *Sustainable Planning Act 2009*

³³ Section 317 *Sustainable Planning Act 2009*

³⁴ Section 326 *Sustainable Planning Act 2009*

- there is a conflict between two or more aspects of any 1 relevant instrument, unless the decision can be seen to support the purpose of that instrument.

If a concurrence agency directs the assessment manager to refuse an application, or attach conditions then the application must be refused or have the requisite conditions attached.³⁵

An application may be refused, approved (in whole or part) or approved with conditions.³⁶ If an application is approved, it is usually approved subject to conditions. All conditions attaching to a development approval must be:³⁷

- relevant to, but not an unreasonable imposition on, the development; or
- reasonably required in respect of the development.

Conditions may be imposed that:³⁸

- place a limit on how long a lawful use may continue or works may remain in place; or
- state that a development may not start until other development permits, for development on the same premises, have been given or other development on the same premises has been substantially started or completed; or
- require compliance with an infrastructure agreement relating to the land; or
- require a document or work to be subject to compliance assessment; or
- require development, or an aspect of development, to be completed within a particular time and require the payment of security.

Ministerial Direction and Call In Powers

If a development involves a State interest³⁹ the Minister may direct the assessment manager to do a number of things, including:⁴⁰

- to hold off on deciding the application for a stated period (where the Minister wants to stop the IDAS clock to decide whether to call in the application⁴¹); or
- to decide the application within a stated period (where the minister wants to fast track a decision).

³⁵ Section 325 *Sustainable Planning Act 2009*

³⁶ Section 324 *Sustainable Planning Act 2009*

³⁷ Section 345 *Sustainable Planning Act 2009*

³⁸ Section 346 *Sustainable Planning Act 2009*

³⁹ Section 417(2) *Sustainable Planning Act 2009*

⁴⁰ Sections 418 and 420 *Sustainable Planning Act 2009*

⁴¹ Section 418(5) *Sustainable Planning Act 2009*

If a development involves a State interest, the Minister also has the power to 'call in' a development application.⁴² The Minister has this power from the time the development application is lodged to within 25 to 50 days after the decision notice is given, depending on the circumstances.⁴³

When a development application is 'called in' the Minister may:⁴⁴

- assess and decide the application in the place of the assessment manager, if the application has not been decided; or
- direct the assessment manager to assess or continue to assess the application; or
- re-assess and re-decide the application if the application has been decided.

The Minister's powers have been expanded as a result of the introduction of SPA. This is because the definition of State interest now includes sustainable development which increases the number of potential applications that invoke the Minister's powers.⁴⁵

There is no appeal to the Planning & Environment Court on a decision made by the Minister.⁴⁶

How long does it take for a development permit to be issued?

The length of time taken is dependent on the nature of the application. A development permit can be issued almost immediately for very simple proposals but may take months for complex applications. Each IDAS stage has its own timeframes. The applicant may take up to 6 months or longer by agreement, to respond to a request for information before an application lapses.⁴⁷ An appeal to the Planning and Environment Court can extend the period for the final decision further.

What if the decision is not made within time?

The assessment manager must decide the application within 20 business days from the start of the decision making period.⁴⁸ The assessment manager may extend the period by up to 20 business days by written notice.⁴⁹ The period can be further extended with the applicant's written agreement.⁵⁰ If a decision is not made within time and the application is code or compliance assessable development, then a application will be a deemed approval (once the applicant has taken the requisite steps).⁵¹ The effect of the assessment

⁴² Section 424 *Sustainable Planning Act 2009*

⁴³ Section 424 *Sustainable Planning Act 2009*

⁴⁴ Section 426 *Sustainable Planning Act 2009*

⁴⁵ Schedule 3 *Sustainable Planning Act 2009*

⁴⁶ Section 427(5) *Sustainable Planning Act 2009*

⁴⁷ Section 279(1)(b) *Sustainable Planning Act 2009*

⁴⁸ Section 318(1) *Sustainable Planning Act 2009*

⁴⁹ Section 318(2) *Sustainable Planning Act 2009*

⁵⁰ Section 318(4) *Sustainable Planning Act 2009*

⁵¹ Section 330-333 and 408 *Sustainable Planning Act 2009*

manager not making a decision for all other assessable development applications is that the applicant can appeal on the grounds of a deemed refusal.⁵²

Who must be notified that a development permit has been given?

The assessment manager must give written notice of an approval within 5 business days to:⁵³

- the applicant;
- each referral agency; and
- if the assessment manager is not a local government and the development is in a local government area, the local government.

The assessment manager must notify the submitters (by sending a decision notice) of an approval within 5 business days after the earliest occurrence of the following:⁵⁴

- the applicant advises the assessment manager that it will not be seeking to make representations to alter the approval; or
- the applicant appeals; or
- the applicant's appeal period (20 business days⁵⁵) ends.

If an application is refused an assessment manager must notify the submitters at about the same time as the applicant (within 5 business days).⁵⁶

Negotiated Decisions

The applicant (but not submitters) may suspend its appeal period once to have negotiations with the assessment manager about conditions attached to an approval.⁵⁷

If the assessment manager agrees with any of the applicant's representations about a matter contained in the decision notice other than a refusal or a concurrence agency requirement it must issue a new decision notice (the negotiated decision notice) within 5 business days.⁵⁸ Submitters have no rights to be included in this negotiation process. However, submitter appeal rights on the decision still apply to the negotiated decision.

Example

A council decides to approve a material change of use for a shopping centre subject to

⁵² Section 461(1)(e) *Sustainable Planning Act 2009*

⁵³ Section 334 *Sustainable Planning Act 2009*

⁵⁴ Section 337 *Sustainable Planning Act 2009*

⁵⁵ Section 461(2) *Sustainable Planning Act 2009 (Qld)*

⁵⁶ Section 337(2) *Sustainable Planning Act 2009*

⁵⁷ Section 361 and 366(1) *Sustainable Planning Act 2009*

⁵⁸ Section 363(4)(a) *Sustainable Planning Act 2009*

conditions. The applicant and referral agencies would be notified. The applicant could seek to negotiate changes to certain conditions with the assessment manager. Some submitters might not even know these negotiations were occurring until they were concluded as the applicant's appeal period had not ended. The lesson for submitters is - be vigilant! Keep talking to the council even after a decision has been made to see if the developer is trying to negotiate conditions. Try to be involved in those negotiations so that you can avoid the trouble of appealing to the Planning and Environment Court (*See Factsheets 9 and 10*).

How do I get a copy of a development permit?

If you are a submitter the assessment manager will give you a copy of the decision notice or negotiated decision notice.⁵⁹

If you did not make a submission or if the application was for code assessment (no public notification) you are entitled to inspect and purchase a copy of the decision notice or negotiated decision notice at the assessment manager's office.⁶⁰

Can a development permit be modified?

Changes, known as permissible changes, can be made to a development approval.

To determine whether the proposed amendments to an 'approval' are permissible, the proposed change is assessed against a number of criteria. The criteria include:⁶¹

- does the change result in a substantially different development; or
- if a new development approval resulted, would the amendment;
 - result in an additional concurrence agency;
 - result in the addition of impact assessment;
 - result in additional possible objectors;
 - result in the incorporation of prohibited development.

If the answer to any of these questions is YES, then the change will not be permitted.

When does a development permit lapse?

A development approval lapses if the development is not started within the relevant period. The relevant period is:⁶²

- material change of use - 4 years;
- reconfiguration of a lot – 2 - 4 years

⁵⁹ Section 337 *Sustainable Planning Act 2009*

⁶⁰ Section 729 *Sustainable Planning Act 2009*

⁶¹ Section 367 *Sustainable Planning Act 2009*

⁶² Section 341 *Sustainable Planning Act 2009*

- other development approvals - 2 years; unless the approval specifies a different period.

What if a development permit is breached?

(see *Factsheet 10*)

The most common remedies if a development permit is breached are:

- declarations;⁶³ and
- enforcement orders.⁶⁴

IDAS: The Compliance stage

For development only requiring compliance assessment, it is possible that this is the only IDAS stage which would need to be completed. Consequently, because development requiring compliance assessment will not be subject to the notification requirements, there will be no opportunity for public comment.

Generally schedule 18 and 19 of the SPR outline the type of development that is development requiring compliance assessment.⁶⁵ The purpose of the compliance stage is to allow development or a document or work to be assessed for compliance with criteria specified in a 'relevant instrument', conditions of a compliance permit or development approval, or other things prescribed under SPR.⁶⁶

Compliance assessment is suitable for development where there are clear technical standards available. If development complies with the compliance standards then a compliance permit will be issued.⁶⁷

Previous approvals can also require compliance assessment for works or documents such as management plans. If they comply with the required standards then a compliance certificate will be issued.⁶⁸

Compliance will be assessed by a compliance assessor and local government/state agencies have the ability to appoint private third parties as compliance assessors.⁶⁹

If the compliance assessor does not make a decision within the requisite timeframe a deemed approved (without conditions) will result.⁷⁰

The compliance assessment process involves the following steps:

⁶³ Section 456 *Sustainable Planning Act 2009*

⁶⁴ Chapter 7, Part 3, Division 5 *Sustainable Planning Act 2009*

⁶⁵ Various other planning instruments have the ability to outline development that is development requiring compliance assessment – see section 397 *Sustainable Planning Act 2009*

⁶⁶ Section 393 *Sustainable Planning Act 2009*

⁶⁷ Section 394 *Sustainable Planning Act 2009*

⁶⁸ Section 812(2) *Sustainable Planning Act 2009*

⁶⁹ Section 399 *Sustainable Planning Act 2009*

⁷⁰ Section 408(3)(a) *Sustainable Planning Act 2009*

1. a person requests compliance assessment;
2. the compliance assessor assesses and decides the request;
3. if in compliance, the compliance assessor issues a compliance permit or compliance certificate;
4. if not in compliance, an action notice is issued notifying the person how to rectify the issue; then⁷¹
5. the request for compliance assessment can then be re-submitted, if needed.⁷²

Appeal rights

(see *Factsheet 9*)

Further information and references

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Web: <http://www.dip.qld.gov.au/>

Your local government

Your local non-government environment council

Relevant Laws

Integrated Planning Act 1997 (Qld)

Statutory Guideline 06/09: Substantially different development when changing applications and approvals

⁷¹ Section 405 (5) *Sustainable Planning Act 2009*

⁷² Section 405 (6) *Sustainable Planning Act 2009*

Statutory guideline 05/09 Sufficient grounds for decisions that conflict with a planning instrument

Statutory guideline 03/09 Declared Master Planned Area Structure Plans

Statutory guideline 04/09 Preliminary approvals that affect a local planning instrument

Statutory guideline 02/09 Making or amending local planning instruments

Statutory guideline 01/09 Priority infrastructure plans and infrastructure charges schedule

Sustainable Planning Act 2009

Sustainable Planning Regulation 2009