



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

Public Access to Information on Planning Processes and Development Applications

SUMMARY

The Integrated Planning Act 1997 (IPA) obliges local councils and sometimes the State department responsible for planning and local government to provide you with certain information on planning processes and development applications.

What planning information am I entitled to?

You are entitled to inspect free of charge and purchase for a reasonable fee the following documents:

- The current planning scheme/s, planning scheme amendments, Regional planning Reports, State planning policies and local planning scheme policies
- Statements of proposals for planning schemes and draft planning schemes (public consultation on these is a statutory requirement).
- Any studies, reports or explanatory statements related to planning instruments
- Council corporate plans, enforcement notices, one previous planning scheme and Ministerial directions and designations.

What information am I entitled to on development applications in my area?

You are entitled to inspect free of charge and purchase for a reasonable fee the following documents:

- Development applications and supporting material from applicants
- Council acknowledgement notice of development application
- Concurrence agency responses

- Public submissions (although not necessarily the names and addresses of submitters)
- Decision notices
- Minutes and reports on meetings and information on financial interests of councillors

You should be able to access material relating to Council analysis of the application

You are also entitled to:

- Ask for additional information
- Use informal channels to acquire information
- Use FOI processes to seek additional information from council and the government

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FULL TEXT

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.

Accessing information - a formal and informal process works best

Comprehensive, timely and accurate information on both public and private plans for your area are vital if you are to be able to contribute to its future shape. This information can come from many sources and through both formal and informal channels.

This fact sheet details the formal mechanisms and entitlements you have to access information under (principally) the *Integrated Planning Act 1997*. However, you should never neglect the value of the informal channels for acquiring information.

It is always worth making contact with the public servants and politicians responsible for the matters that interest you. Keep in touch with those people by

telephone, ordinary and electronic mail or best of all, personal visits or other contact. This may help you obtain early warning of development proposals for your area, changes to applications in process and so on.

Be assured that experienced developers will be working the informal channels as well, accessing information and trying to influence the views of the decision makers.

Your formal entitlement to information

The Queensland *Integrated Planning Act 1997* imposes obligations on your local government, the assessment manager and the chief executive of the State Department of Local Government and Planning to make available certain documents for inspection only, or for inspection and purchase by the public. The assessment manager administers applications and is usually your local government.

If you have access to a copy of that Act, look at Chapter 5, Part 7 headed 'Public Access to Planning and Development Information' and section 3.2.8 headed 'Public Scrutiny of Applications' for an outline of some of those obligations.

Information on development applications

How can I check what development applications have been lodged relating to my area?

Some development applications (for impact assessable development) must be publicly notified by notice in the public notices section of the paper, notice on the land and a letter to adjoining owners. The approved form of that public notice advises what the type of application is and where the documents are available for inspection but need not contain a contact phone number for you to make further enquires about the details of the application. Other types of development applications (for code assessable development) are generally not publicly notified.

If you suspect any type of development application has been lodged you can also go to the Council and try asking the staff to word search particular key words (eg a major street) on their computers to see what comes up. Some councillors keep lists of current development applications and copies of major development applications at their ward offices for constituents to inspect.

Perhaps your group could convince your councillor to keep it informed when a particular type of application is lodged or to be lodged. However do not rely on that happening, it is wise to have several sources of information.

Can I see information about a development application if the application is not publicly advertised?

Yes. The public is entitled to inspect and purchase all applications and supporting material, even for those applications that were not publicly advertised (s3.2.8 IPA).

Where can I access information on a particular development application?

The application and supporting material can be inspected at the office of the assessment manager (usually your local government). The assessment manager could decide in addition to make the material available at another place (s3.2.8, s5.7.1 IPA).

What type of information can I see about a development application?

The assessment manager must keep the application and any supporting material 'available for inspection and purchase' (see later definition). You are entitled to inspect and purchase the original or a certified copy of the application and any supporting material.

What is included in an application?

The application must be made in a form approved by the chief executive officer of the Department of Local Government and Planning. The application must contain the consent of the owner to making the application. It will ordinarily provide useful information about the applicant, the property the subject of the application, the nature of the application and other State agencies involved in the decision.

What is included in supporting material?

The supporting material includes:

- The 'acknowledgment notice' which is required to be given to the applicant after lodgement of all applications requiring public notification and some applications that do not require public notification. The notice is useful to read as it will detail the aspects of development that the applicant seeks approval for, any referral agencies involved and their addresses, the public notification requirements and other matters (s3.2.3 (2) IPA and s3.2.6 IPA);
- Material (including site plans, elevation and supporting reports) about the aspect of the application assessable against or having regard to the planning scheme. That material must have been given to the assessment manager before a decision is made and be in the assessment manager's possession when the request for inspection is made. This includes, for

example, the information requests made to the applicant and the applicant's response, the response of concurrence agencies (which must have regard to the planning scheme under s3.3.15(1) IPA) as to whether or not they require the aspect of the application refused, or conditions attached) (see Factsheet 5). It includes submissions lodged by members of the public, or letters sent in by the public, concerning the application; and

- Any information request for the application. This captures information requests made by the assessment manager (s3.2.8 (3)(b) IPA).

What type of information is not supporting material?

Supporting material does not include:

- Materials relevant to the application that are held by the concurrence agencies but never forwarded to the assessment manager. For example, notes of meetings between the applicant and the concurrence agency, copies of complaints about the developer or operations on the site, background reports or materials prepared by the concurrence agency in order to assist to decide his or her analysis of the proposal;
- Any material the assessment manager is satisfied contains sensitive security information (s3.2.8 (2)(a) IPA) or other information not reasonably necessary for the public to access for the purpose of considering the effects of the development (s3.2.8 (2)(b) IPA). Examples include details about the financial affairs of the applicant or the costs of building work;
- Any material given to the assessment manager after the decision is made. This also appears to be unintentionally restrictive and possibly a drafting error in IPA as the applicant can make representations to the assessment manager after the decision is made to vary conditions, resulting in a new decision contained in a 'negotiated decision notice' (s3.5.15 and s3.5.17 IPA); and
- The names and addresses and signatures of submitters, if the assessment manager decides to remove those before making the submission available for inspection and purchase (s3.2.8 (2A)).

Meaning of Available for Inspection and Purchase

(1) A document mentioned as being available for inspection and purchase, for example the application and any supporting material, is "available for inspection and purchase" if the document, or a certified copy of the document is-

- (a) for a document held by a local government-held in a local government's office and any other place decided by the local government; and
- (b) for a document held by an assessment manager-held in the assessment manager's office and any other place decided by the assessment manager; and
- (c) for a document held by a concurrence agency-held in the concurrence

agency's office and any other place decided by the concurrence agency.
(d) for a document held by the chief executive - held in the department's State office and any other place the chief executive approves.

(2) If a document is available for inspection and purchase, a person may-

(a) inspect the document free of charge at any time the office in which the document is held is open for business; and

(b) obtain a copy of the document, or part of the document, from the entity required to keep the document available for inspection.

(3) An entity required to keep a document available for inspection and purchase may charge a person for supplying a copy of that document or part of that document.

(4) The charge must not be more than the cost to the entity of-

(a) making the copy available to that person; and

(b) if the person asks for the material to be posted- the postage, (s5.7.1 IPA)

Note. The IPA provides that documents other than the application and supporting material 'available for inspection' or 'available for inspection and purchase' may be contained in hard copy or electronic form.

Can I attend assessment manager's meetings or subcommittees discussing or deciding the development application? Can I see a copy of the minutes of those meetings?

The assessment manager is usually the local government. Meetings of the local government and of local government committees are to be in public, unless the local government or committee has resolved that the meeting be closed. One of the grounds for closing the meeting is to discuss an action to be taken by the local government under the *Integrated Planning Act 1997*, including deciding a development application. Other than procedural resolutions, the local government or a committee must not make resolutions in a closed meeting.

Minutes of the meetings of the local government or its subcommittees must be kept unless the committee is exempted by resolution of local government where the committee has only an advisory or recommendatory function. If so exempted the committee must give a written report of its deliberations and its advice or recommendations to the local government.

A copy of the minutes of each meeting of the local government (not committee) must be available for inspection at its public office within 10 days after the end of the meeting and when the minutes have been confirmed they must be available for purchase.

How can I find information about my Councillor's financial interests?

This information is important to know for the public trying to ensure a fair decision on a development application, as a councillor with a 'material personal interest' in a matter such as a development application is prohibited from taking part in any council or committee meeting where the matter is being considered or voted upon. The councillor cannot be in the chamber where the meeting is being conducted, including any area set aside for the public. Exceptions may be granted by the Minister for Local Government and Planning. If the councillor breaches s244 penalties are imposed (see Factsheet 12).

The chief executive officer of a local government must keep a register of the interests of each local government councillor, and a register of the interests of certain related persons, including the councillor's spouse, dependent or substantially dependent child and certain other persons (s247 *Local Government Act 1993* and s14 *Local Government Regulation 1994*).

The extensive details of the financial and non financial particulars that must be contained in the register, such as councillor's share holdings in any company, are set out in s17 of the *Local Government Regulation 1994*.

A register of councillor's interests is open to inspection. A register of the interests of a related person, however is only open to inspection by another councillor, or a person permitted by law (eg The Auditor General) to have access to the information in the register. For access to the register a person must apply in writing to the chief executive officer who must record details of the name and address of each person given access and the date of access.

The chief executive officer must advise a councillor of any access given to a councillor's register or the register of any related person.

An offence is created for knowingly disclosing information obtained from the councillor's register that is not a true copy or a fair summary. An offence is created for disclosing information from the other person's register other than to specified persons.

There is also a register of electoral gifts to councillors which must be kept open to inspection.

Can I use the *Freedom of Information Act* to obtain information on development applications?

The public rights to inspect and purchase documents under the *Integrated Planning Act 1997* are the most useful means of obtaining information on development applications. However the *Freedom Of Information Act 1992* provides an additional right of general public access, subject to exceptions and exemptions, to documents of agencies (eg local government, or State

Departments) or to an official document of a Minister. For example, it could be useful to use FOI to obtain access to those documents that are outside the definition of supporting material, discussed above.

If you decide to put in a FOI application, do that as early as possible, because there is no obligation on the agency to decide that application in a timeframe that fits in with *Integrated Planning Act 1997* time frames. The agency is entitled to take 45 days from the date of receipt of your application, plus extensions, to make a decision on your application and notify you. For documents more than 5 years old that do not relate to your personal affairs, the period is 60 days. If your application is refused and you appeal, further time will pass. Assessment managers have no power to extend the time for public submissions on a development application just because your FOI application is not resolved.

If the documents applied for under the *Freedom Of Information Act 1992* are already reasonably open to public access under another enactment such as the *Integrated Planning Act 1997*, reasonably available for purchase by arrangements made by an agency or reasonably made available for public inspection at the Queensland State Archives or a public library, then access may be refused.

What does it cost to inspect or copy information on a development application?

Under the IPA inspection is free. If you require copies of any of the documents, or parts of any of the documents available for inspection the assessment manager must supply those copies, but a charge may apply. The charge must not be more than what it costs to make the copy available, plus any postage charge if you ask for the material to be posted.

Why won't the Council give me copies of the plans?

The authors of the plans and other supporting information to the application hold copyright under the Copyright Act 1968. If the consent of the authors was not given as part of the application, you may be denied copies of the relevant supporting materials from the Council.

Is the applicant obliged to provide all background documents referred to in the application?

No. However it is worth asking your assessment manager to ask the developer to make background documents available so that you can understand the application. If ample information is provided, then it is less likely that people will oppose the development based on fear. You may have to obtain some documents eg CSIRO Reports from other sources (see Factsheet 6 on Submissions on a Development Application).

When is the information on the development application taken away?

The application and any supporting material is available for inspection and purchase from the time the assessment manager (usually the local council) receives the application until the end of the last period during which an appeal may be made against the assessment manager's decision. So if you submitted, but do not agree with the assessment manager's decision, you can go back and inspect the materials again before deciding whether or not to appeal.

However the application and supporting material need not be kept on display if the assessment manager decides not to accept an application because it is not properly made, or if the application lapses or is withdrawn.

State intervention and the assessment manager's decision

The assessment manager and the chief executive of the Department of Local Government and Planning are each obliged to keep available for inspection and purchase each written notice given to the assessment manager by the Minister for Local Government and Planning 'calling in' the development application. 'Calling in' is when the Minister becomes the decision maker for that application instead of the assessment manager.

'Call ins' are rare but controversial events, and the Minister is obliged to prepare a report on each call in which the chief executive of the Department of Local Government and Planning (but not local governments) are obliged to keep available for inspection and purchase.

The chief executive and the local government must also keep available for inspection and purchase each direction by the Minister directing the assessment manager to attach conditions to a development approval.

Information on development approvals

Are submitters notified of the decision?

If you made a submission on an impact assessable development application, then you must be notified in writing of the assessment manager's decision, or if a negotiated decision notice is issued instead, you must be notified of that later negotiated decision.

Where else can I find what was decided?

The assessment manager must keep available for inspection and purchase each decision notice and negotiated decision notice given by the assessment manager or given to the assessment manager by a private certifier (s5.7.4 (1) IPA). Private certifiers can certify certain building work.

The assessment manager is also obliged to keep details of development

applications (other than those awaiting decision, in which case the application and supporting material are available) on a register open to inspection only.

One example of the details on the register is whether the decision was changed because of a Court appeal. It is not clear whether a full copy of the Court decision and any conditions will be on the register or not. If not you may need to search the Court file on the appeal to get a copy of the Court orders that specify the conditions.

What about old development approvals?

There is no obligation on the assessment manager (usually your local government) to keep available for inspection consents and approvals given under the repealed *Local Government (Planning and Environment) Act 1990* (i.e. if the application was lodged before 30 March 1998).

Ask the local government to give you a copy anyway. If that fails, you may need to use *Freedom Of Information Act 1992*.

Access to information on planning

Available for inspection and purchase

The definition of 'available for inspection and purchase' (see earlier box under the heading of Development Applications) is relevant for this section on access to information on planning.

Where can I inspect a copy of my current planning scheme?

The office of your local government and also the State office of the Department of Local Government and Planning. Inspection is free of charge.

If those locations are not convenient for you, for example if you live in a large regional shire far from your council office, ask your Council to hold a copy for inspection at a more accessible location, such as the local library branch. Your council and the chief executive of the Department each have a discretion to hold a copy of the planning scheme at additional locations, so they might agree to your request.

Along with the planning scheme, you are also entitled to inspect any consolidated planning scheme, any amendments of the planning scheme, current planning scheme policies (these support the local dimension of the planning scheme) and rare instruments called temporary local planning instruments. The local government, but not the Department, must also make available for inspection each study, report or explanatory statement relating to the scheme and other documents just mentioned.

Am I entitled to buy a copy of the planning scheme?

Yes, the local government is obliged to make the planning scheme and above mentioned documents available for inspection and purchase and may charge for supplying a copy of a document, or part of a document. The charge must not be more than what it costs to make the copy available, plus any postage charge if you ask for the material to be posted.

The Department, while not obliged to make these documents available for purchase, in practice does supply members of the public with copies of part of the documents after an inspection at its head office.

May I inspect and purchase copies of State planning policies and Regional Planning Reports?

Yes. Each local government must make these available for inspection and purchase at its office if they apply to its area. Terms of reference for any relevant regional planning advisory committee, which prepares the reports, are also available.

The Department of Local Government and Planning must make available for inspection and purchase all current State planning policies, all explanatory statements about current State planning policies, the terms of reference for all regional planning advisory committees and all reports of regional planning advisory committees. There is no obligation on either the Department or your local government to make available copies of existing regional planning reports like SEQ2000 or FNQ2000.

Can I see a copy of the Council's corporate plan?

Yes. This is a 3 year plan made under the *Local Government Act 1993*. It is essentially a 'business plan' for the corporatised part of the Council. As it influences council budgets and staffing it can influence what the council is prepared to include in its planning scheme. The corporate plan is open to inspection and may be purchased at the local government's office (s663 *Local Government Act 1993*).

How can I access information on out of date planning schemes and other out of date planning instruments?

The sole location where you are entitled to inspect and purchase out of date planning schemes and policies for your area is at your local government office. However only the one behind the current scheme or policy must be made available to you. If you need a scheme that is so out of date it is not available for inspection and purchase you will need to make informal attempts to access a copy or resort to *Freedom Of Information Act 1992* procedures. It is possible to

cut and paste your own copy using back issues of the Government Gazette but this is likely to be too time consuming.

How can I access information on a statement of proposals, proposed planning scheme or other proposed planning instrument?

For proposed planning schemes and most planning scheme amendments, a statement of proposals must first be prepared. The local government must make that statement of proposals available for public inspection and purchase at its office during the preliminary consultation period, which runs for a minimum of 40 business days after giving of public notice. When later the proposed planning scheme or proposed amendment is prepared the local government must make it available for inspection and purchase at its office for a minimum of 60 business days (30 business days for an amendment) after giving of public notice (see Factsheet 4).

How can I find out what the Environment Protection Agency thinks of the proposed planning scheme?

Try informal phone calls, as there is no obligation on your local council to allow inspection of correspondence from the various State agencies or departments, or try as a last resort a Freedom of Information application.

What if the local government decides not to proceed with a proposed planning scheme?

The report prepared by local government stating the reasons why must be kept available for inspection and purchase.

What does it cost to access information on a statement of proposals for a proposed planning scheme or other proposed planning instrument?

Inspection is free. If you require copies of any of the documents, or parts of any of the documents available for inspection the local government must supply those copies, but a charge may apply. The charge must not be more than what it costs to make the copy available, plus any postage charge if you ask for the material to be posted.

Checking on State Involvement in Planning Schemes

The chief executive of the Department of Local Government and Planning and Sport, and also the relevant local government, must keep certain written directions of the Minister for Local Government and Planning to the local government available for inspection and purchase. These directions are to make or amend a planning scheme, to make or repeal a temporary local planning instrument and to make amend or repeal a planning scheme policy.

The local government must keep available for inspection and purchase each notice about designation of land given to the local government by a Minister. Designation of land is a process by which the Minister requires the local government to amend its planning scheme to permit community infrastructure such as a hospital or State controlled road.

Information on enforcement of planning and development decisions

How can I find out what enforcement action my council is taking?

Local government must keep available for inspection and purchase 'show cause' notices and enforcement notices given by the local government (or private certifier if a copy is given to the local government) under the *Integrated Planning Act 1997* or the *Building Act 1975*.

Also, each enforcement order made by the Court on the application of the local government must be kept available for inspection and purchase. Enforcement notices may direct a person to stop committing a development offence or require the person to take remedial steps or both. Show cause notices are a precursor to the enforcement notice.

Assessing authorities must also keep available for inspection and purchase relevant show cause notices, enforcement notices, and enforcement orders of the Court. 'Assessing authorities' include the assessment manager for a development permit, or a concurrence agency in relation to conditions imposed due to a requirement of the concurrence agency. Where development is undertaken without a development permit the assessing authority is assumed to be the assessment manager or concurrence agency applicable if an application had in fact been lodged and conditions 'imposed'.

Planning and Development Certificates

If you are thinking of buying a property or in some circumstances leasing a property you should ask your solicitor about obtaining a planning and development certificate relating to that property. Planning and development certificates are of three types - limited, standard or full.

The certificates provide information about planning scheme provisions and developer approvals and other matters that could influence the use to which you could put the premises, or outstanding charges or obligations.

Figure 8.1 Public access to information

DEVELOPMENT	Available	Available	Where held?	Relevant
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APPLICATIONS	for Inspection	for Purchase?		legislation
Development Application & supporting materials	Yes	Yes	Office of the Assessment Manager	ss3.2.8, 5.7.1 <i>Integrated Planning Act 1997</i>
Minutes of the Assessment Manager's Meeting/s	Yes (if kept - see ss459, 461 LGA)	Yes (when confirmed)	Local Government Office	ss448, 459, 461-3, 468 <i>Local Government Act 1993</i>
Information about Councillors' Financial Interests	Yes	No	CEO of LGO	ss 245-8 LGA
Interests of Persons Related to a Councillor	No (Yes, if other Councillor or Auditor-General)	No	CEO of LGC	ss245-8 LGA
Electoral Gifts to a Councillor	Yes	No	CEO of LGO	ss433-4 LGA
Register of finalised Development Applications(e.g. lapsed or decided)	Yes	No	OAM	s5.7.5 (1) IPA
DEVELOPMENT APPROVALS				
Decision Notice/Negotiated Decision Notice	Yes	Yes	OAM	s5.7.4(1) IPA
Old Development Approvals - pre 30/3/98	No (Ask or try FOI)	No	N/A	
PLANNING				
Current Planning Schemes	Yes	Yes	LGO & DLGP	s5.7.2 IPA
State Planning Policies	Yes	Yes	DLGP	s5.7.2 IPA
Temporary Local Planning Instruments	Yes	Yes	LGO & DLGP (inspection only)	ss5.7.15.7.2 IPA
Regional Planning Reports	Yes	Yes	LGO	s5.7.2 IPA
Council Corporate Plan	Yes	Yes	LGO	s663 LGA
Out of Date Planning Schemes and Instruments	Yes, (only the one	Yes, but limited as	LGO	s5.7.2 IPA

	directly before the current one). Otherwise, no.	before.		
Statement of Proposals	Yes (for 40 business days after public notice)	Yes	LGO	s2.1.5 Sch1 s5 IPA
Proposed Planning Schemes/Amendments	Yes (for 60 business days after public notice)	Yes	LGO	s5.7.2 IPA
Directions of the Minister	Yes	Yes	LGO & DLGP	s5.7.2, 5.7.6 IPA
Notice of Designation of Land by a Minister	Yes	Yes	LGO	s5.7.2 IPA
ENFORCEMENT ACTION				
Show cause notice, enforcement notice	Yes	Yes	LGO & Assessing Authorities	IPA
Notice of proceeding	Yes	Yes	DLGP	s5.76 IPA
Notice of appeal given to CEO DLGP	Yes	Yes	DLGP	s5.76 IPA
PLANNING - DEVELOPMENT CERTIFICATES				
Limited, Standard or full	No	Yes	LGO	s5.7.8 IPA