

PLANNING

1.Planning instruments

Planning And The Sustainable Planning Act

- Queensland's most important piece of land use legislation is now the *Sustainable Planning Act 2009* (SPA). SPA came into force on 18 December 2009.
- Like its predecessor the *Integrated Planning Act 1997*, SPA sets out the basic elements of local and State planning instruments. It also continues the broad powers of the Planning Minister to direct a local government to make, amend or review its local planning instruments.

Community Involvement In The Plan Making Process

The importance of the plan making process

- Planning schemes are the most important tool used by councils and decision makers when deciding what development can occur where.
- Easier to stop inappropriate development at the planning stage, rather than at the development assessment stage.

Problems for community in the plan making process

- Plans are lengthy and complex
- Plans are very uninteresting and abstract
- Consultation occurs late in the process, resulting in feelings of not being heard

Types Of Planning Instruments

State planning Instruments

- State planning policies (as under IPA)
- State planning regulatory provisions (as under IPA)
- Regional plans (as under IPA)
- Standard planning scheme provisions (NEW)
- Temporary State planning policy (NEW)

Local planning instruments

- Planning schemes (as under IPA)
- Temporary local planning instruments (as under IPA)
- Planning scheme policies (as under IPA)

Process for Preparing and Changing a Planning Scheme

- Process under SPA is set out in Statutory Guideline 02/2009. Statutory guidelines are binding.



What's New

- Standard planning scheme provisions (called Queensland Planning Provisions) (State can prohibit development)
- Some new terminology: DEO's are now called Strategic Directions
- Minimum public consultation times for new schemes has been reduced

2. DEVELOPMENT ASSESSMENT

What's New Under The Sustainable Planning Act 2009

- Queensland's most important piece of land use legislation is now the *Sustainable Planning Act 2009* (SPA). SPA came into force on 18 December 2009.
- SPA'S development assessment provisions are similar to those of the *Integrated Planning Act 1997*. The Integrated Development Assessment System or "IDAS" is still the process that governs development assessment, with five possible stages being application, information and referral, public notification, decision and compliance stages.
- If a development application was lodged prior to 18 December 2009 then its assessment and any appeal follow the *Integrated Planning Act 1997*.

Community Rights and Development Assessment

If the development requires application and assessment then any member of the public is entitled to:

- View and obtain copies of the application and supporting material (often online) from the assessment manager (usually council) from date of lodgement of the application:
- Write a letter to the assessment manager giving your views on the application:
- If the development application is assessable development impact assessment only, make a submission that gives rise to later Court appeal rights.

Minimum public notification period is 15 business days, 30 days if three or more concurrence agencies, if prescribed under a regulation or if application is for a preliminary approval.

Categories of Development and Assessment Criteria

- Exempt - needs no development permit "DP".
- Self assessable - needs no DP but must comply with codes.
- Compliance assessment - needs a compliance permit only. **NEW UNDER SPA**
- Prohibited -State decides what is prohibited -any application for PD taken not to be made and IDAS does not apply **NEW UNDER SPA**
- Assessable, impact and code- needs a development permit.
- Criteria for decision set out in SPA Chapter 6, Part 5 Division 2 and 3. State Regulatory Provisions and Regional Plans important. Still can conflict with relevant planning instrument if sufficient grounds to justify the decision despite the conflict.

Decision Makers

- Assessment Manager- usually the Local government
- Referral Agencies- Concurrence agency can refuse/approve condition development, advice agencies can only advise. *DERM is an example concurrence agency for a list of*



activities e.g. for waste disposal facilities, sewerage treatment works. If no response from C. Agency within time frame some applications may be deemed approved (s286 SPA) **NEW UNDER SPA**

- State Minister can still call the development application in, and decide it with no appeal.
- “State interests” expanded - expressly include sustainable development. **NEW UNDER SPA**

Other Changes That Are Different Or Better

- Changes to the development application stage, new process if applications are not properly made. Approved form may contain mandatory information including requirements without which application is not properly made
- Changing development applications less onerous, new test “substantially different”
- Applicants have shorter periods to respond to information requests before application lapses

3.ACCESS TO INFORMATION ON PLANNING

See Chapter 9 Part 6 SPA

The *Sustainable Planning Act 2009* has a large section on Public Access to Planning and Development Information – Chapter 9, Part 6 s724 -742 which sets out very clearly what documents you can access by way of inspection and purchase or just inspection. It is divided into obligations on Local Government, Assessment Managers, Referral Agencies, compliance assessors & the chief executive of the Department of Planning & Infrastructure.

Generally your local government will have all applications, supporting information, planning instruments, supporting information to local planning instruments and Ministerial Notices available for inspection and purchase. They are obliged to keep registers of all development applications and decisions. For development applications, you can access the application and supporting documentation when lodged, no need to wait for public notice. Once any appeal period has expired, only the final decision notice will be available as the earlier application and supporting materials will have gone from public display.

The Department of Infrastructure and Planning will have all planning instruments and Ministerial Notices and Directions available for inspection and sometimes purchase. It also has copies of Court proceedings and Appeals online.

Use the Web

Many local governments have development applications and materials online e.g. Brisbane. Others have put basic details of applications online until any appeal period has expired - as SPA requires it, but not all the documentation.

SPA obliges the assessment manager (usually the local government), if they have a website, to publish online all decision notices and negotiated decision notices and deemed approvals given by or to the assessment manager. Many councils have taken materials off their websites due to concerns about breaching the *Information Privacy Act 2010* and amendments to SPA are foreshadowed by the Minister.



Right To Information Act 2009 (“RTI”) Effective 1st February 2010

Most of what you need on planning and development can be obtained most quickly and cheaply by reference to specific provisions of the SPA. Only resort to the RTI Act if you cannot get the material by asking your councillor or public servants, or by using the provisions of the SPA.

RTI Act applies to the State, to local governments and, a change from FOI Act, to government owned corporations. It might be useful for example to find out detailed dealings on a development application before anything is formally lodged, old materials you can't access under SPA or complaints about breaches of conditions.

The application is now called “an access application”. The RTI has a pro disclosure bias so hopefully there will be more documents made available. Instead of numerous exemptions and exceptions there are lists of factors to be taken into account favouring or against disclosure. Cabinet still enjoys various exemptions

As under the Freedom of Information, you still need to pay fees. Individuals and non-profits can seek exemptions based on financial hardship.

FAST-TRACKING PLANNING AND ENVIRONMENTAL PROTECTION

1. Ministerial Call in under the SPA

The Minister may call in a development application if State interests are effected, even for a certain time after lodgment of an appeal with the Planning and Environment Court. The Ministers decision is final and ends any appeal.

Examples include the 2010 call in of a 30 storey building proposed next to Milton railway station.

2.State Development and Public Works Organisation Act 1971 (“SDPWOA”)

Significant project declaration.

The Coordinator general may declare a project a significant project under Part 4 of the SDPWOA. This is usually only done for major projects worth over \$50 million that do need coordination.

If declared, the procedure for environmental impact assessment set out in Part 4 applies instead of the IDAS process under SPA. If Commonwealth interests are triggered then the Environmental Impact Statement (“EIS”) may deal with impacts relevant under State and Cth legislation. For significant projects, concurrence agencies such as DERM become mere advice agencies.

Examples of Significant Projects with Cth and State elements in the EIS include the proposed Traveston Dam, rejected by the Cth. The Balaclava Island Coal Export Terminal has been declared a significant project.

State Development Area declaration.

A regulation may declare any part of the State to be a State Development Area under Part 6 of the SDPWOA. The development scheme for the area is prepared by the Coordinator General and ultimately may be approved by the Governor in Council. This makes the Coordinator



General responsible for the planning, establishment and ongoing management of state development areas throughout Queensland. The Coordinator General has broad powers to take land (subject to paying compensation) in the area, to direct local bodies to do works and to do works. Within a State Development Area, you may have a significant project. The development scheme specifies when and if public notification is required of a development application.

An example is the Gladstone State Development Area, which is 28,000 hectares. In 2008 it was amended to include the Curtis Island Industry Precinct for Liquefied Natural Gas facilities on the southern part of the Island and an Environmental Management Precinct east of the range on the Southern Part of the island. Material change of use in this area are assessed by the Coordinator General against the development scheme but not environmentally relevant activities, which are assessed under SPA.

3. Urban Land Development Authority Act 2007

This legislation creates a new Authority, the Urban Land Development Authority to plan, carry out and promote development in declared areas. The purpose of that Act focuses on housing creation. When an area is declared an urban land development area by regulation, the declaration must make an interim land use plan for the area. The Authority must make a new development scheme for the area which is like a planning scheme. There is mandatory public notification of the new planning scheme and public submissions must be taken into account. The development schemes must be published on the ULDA website. The planning scheme sets out if any individual development applications must be publicly notified. The development scheme prevails over plans, policies and codes made under SPA or another Act. Effectively, the Urban Land Development Authority becomes the decision maker in lieu of council. Only the Authority may go to the Planning and Environment Court to seek enforcement orders or declarations whereas under SPA any person has that entitlement.

Examples of areas declared urban land development areas include Andergrove at Mackay and a recent proposal is Caloundra South.

Further information

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Department of Environment and Resource Management

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DERM Annual Report March 2009-June 2010

<http://www.derm.qld.gov.au/about/corporatedocs/annualreports.html>

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