



Community Rights to be Involved in Development Assessment

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What is this factsheet about?

This factsheet provides an overview of the development assessment framework under the new Queensland planning framework found in the [Planning Act 2016 \(Qld\)](#) (PA). In particular, it explains the different types of development and development approvals. It outlines when a development application needs to be publicly notified, and summarises the key provisions of the PA that relate to making submissions on development applications.

The PA was assented to on 25 May 2016 and substantially commenced on 3 July 2017. It repealed the *Sustainable Planning Act 2009*.

The key points are:

- What is a development assessment and when is one needed?
- What are the different categories of development and assessment?
- What are exemption certificates?
- When must a development application be publicly notified?
- How are submissions made on development applications?
- Tips on making an effective submission

Planning and Development in Queensland

The [Planning Act 2016 \(Qld\)](#) (**PA**) continues the system of development assessment and planning that was established under previous planning legislation. It replaces the now repealed *Sustainable Planning Act 2009 (Qld)* (**SPA**).

The development assessment system works to implement planning instruments and other policies and requirements by:

- a) categorising development;
- b) categorising types of assessment for particular development;
- c) stating the processes for making, receiving, assessing and deciding development applications; and
- d) establishing rights and responsibilities in relation to development approvals¹

The State Assessment and Referral Agency (**SARA**) - part of the Department of Infrastructure, Local Government and Planning (**DILGP**) - is given statutory recognition under the PA.²

Defining Development

The PA defines 'development' as any of the following:

- a) carrying out:
 - (i) building work; or
 - (ii) plumbing or drainage work; or
 - (iii) operational work; or
- b) reconfiguring a lot; or
- c) making a material change of use of premises.³

These terms are further clarified in Schedule 2 of the PA.

Categories of Development

There are now three categories of development under the PA - prohibited, assessable or accepted development.⁴

- Prohibited development: development for which a development application may not be made
- Assessable development: development for which a development approval is required.

¹ [Planning Act 2016 \(Qld\)](#) s 4(f) (**PA**).

² PA Schedule 2.

³ Ibid.

⁴ PA s 44(1).

- Accepted development: development for which a development approval isn't required.⁵ (Accepted development is a combination of exempt and self-assessable categories under the SPA.)

If a type of development is not categorised in a categorising instrument, the development is taken to be an accepted development.⁶

A categorising instrument states the type of assessment that must be carried out for assessable development.⁷

Categories of Assessment

There are two categories of assessment for assessable developments, namely:

- a) code assessment; and
- b) impact assessment.

Code assessment

A code assessment is an assessment that must be carried out only:

- a) against the assessment benchmarks (i.e. the matters that an assessment manager must assess the development against) in a categorising instrument for the development; and
- b) having regard to any matters prescribed by regulation.⁸

A code assessment is now described as a “bounded” form of assessment. This means that developments must be assessed more strictly against the criteria set out in the relevant code or ‘assessment benchmark’ as they are now referred to.

There is also now a presumption of approval; the assessment manager must approve the development application as long as it complies with at least some of the relevant assessment benchmarks, or can be conditioned in such a way that it complies.

The assessment manager can only refuse the code assessable development application if the development cannot be conditioned to meet the assessment benchmarks.

⁵ Ibid s44 (2), (3) and (4).

⁶ Ibid s 44 (5) and (6).

⁷ PA s 45(2).

⁸ Ibid s 45(3). An example of an assessment benchmark is a code, a standard, or an expression of the intent for a zone or precinct in a planning scheme.

Impact assessment

An **impact assessment** is an assessment that:

- a) must be carried out –
 - (i) against the assessment benchmarks in a categorising instrument for the development; and
 - (ii) having regard to any matters prescribed by regulation; and
- b) may be carried out against, or having regard to, any other relevant matter other than a person's personal circumstances, financial or otherwise, such as planning need.⁹

Essentially, an impact assessment must be assessed against the assessment benchmarks, and regard may be had to other relevant matters at the discretion of the decision maker.

What is a Categorising Instrument?

There are two types of categorising instruments in the PA:

- a) a regulation, or;
- b) a local categorising instrument.¹⁰

A local categorising instrument can be:

- a) a planning scheme;
- b) a temporary local planning instrument, or;¹¹
- c) a variation approval.¹²

A categorizing instrument does any or all of the following:

- a) categorises development as prohibited, assessable or accepted development;
- b) specifies the categories of assessment required for different types of assessable development; and
- c) sets out the matters (the assessment benchmarks) that an assessment manager must assess assessable development against.¹³

If inconsistencies arise between a regulation made under the PA and a local categorising instrument, the regulation will apply.

⁹ Ibid s 45(5).

¹⁰ PA s 43 (1).

¹¹ Temporary local planning instruments (TLPs) set out planning and development assessment policies that protect all or part of the local government area from adverse impacts in urgent or emergent circumstances.

¹² A variation approval means that part of a preliminary approval for premises that varies the effect of any local planning instrument that is still in effect for the premises.

¹³ PA s 43 (1).

A local categorising instrument:

- a) may state development is a prohibited development only if a regulation allows it to do so;
- b) may not state that development is assessable development if a regulation prohibits it from doing so; and
- c) may not, be inconsistent with the effect of a specified assessment benchmark, or a specified part of an assessment benchmark identified in a regulation.¹⁴

To the extent a local categorising instrument does either of these things, then it has no effect.¹⁵

Statement of Reasons

The PA provides a new requirement for decision makers assessing development applications to provide reasons for their decision.¹⁶ This information will be published on the local or state government's website. The decision notice will need to identify where the approval did not comply with the assessment benchmarks.

In the case of impact assessments, the decision notice must state a description of the matters relevant in any submissions and how the assessment manager dealt with these matters when reaching a decision.

The aim of these provisions is to provide more transparency about decision making than what existed under the SPA.

The notice, containing the reasons, must be published on the assessment manager's website.

While reasons must always be supplied, the scope, style and format of the reasons for a particular decision may depend on the type, size and scale of the particular development.

Exemption certificates

An exemption certificate is a new concept in planning assessment introduced by the PA. A development approval is not required for assessable development if there is an exemption certificate for the development.¹⁷

An exemption certificate can be given either by the relevant local government or the chief executive administering the PA.

¹⁴ Ibid s 43(4).

¹⁵ PA s 43(5).

¹⁶ Ibid s 56 (7) for referral agencies; s 63 (5) for assessment managers.

¹⁷ Ibid s 46(1).

An exemption certificate can only be given in limited circumstances. One of these is when the effect of the development would be minor or inconsequential and all referral agencies (if there are any for the development) had agreed in writing to the exemption certificate being given.¹⁸

Section 46 (3)(b) of the Planning Act prescribes three circumstances where an exemption certificate may be given. At least one circumstance must apply, although more than one can apply.

Effects will be minor or inconsequential

Section 46(3)(b)(i) provides if the effects of the development would be minor or inconsequential, an exemption certificate may be granted. The effects of the development must be considered.

Particular circumstances that no longer apply

Section 46(3)(b)(ii) provides that if the development was categorised as assessable development only because of particular circumstances that no longer apply, an exemption certificate may be given. The word “only” is important in this provision. The question is whether or not the sole ground upon which the development was assessable in the first place no longer exists.

Categorisation as assessable in error

Under section 46(3)(b)(iii), if the development was categorised as assessable because of an error, then an exemption certificate may be granted. For example, where a development permit is required because of an error in the planning scheme (like a mapping error). This is to avoid delay while a more permanent measure is implemented, such as correcting the local planning scheme.

Effect of the exemption certificate

If an exemption certificate is granted, the development is still an assessable development, but development approval is no longer required.

The decision maker is required to publish a notice about the decision to grant an exemption certificate. The notice must state the reasons for giving the certificate.

An exemption certificate has effect for two years after the day it was given, unless a later date is specified.¹⁹

Types of Development Approvals

The PA continues to prescribe two key types of development approval:

- a) a preliminary approval; and
- b) a development permit.

¹⁸ Ibid s 46 (3).

¹⁹ PA s 46(6).

Preliminary Approval

A preliminary approval approves development, but does not authorise the development to be carried out.

A preliminary approval can include a 'variation approval' to change the planning scheme.²⁰

Development Permit

A development permit authorises assessable development to the extent stated, subject to its conditions and any preliminary approval relating to the development (including any conditions).

There is no requirement to get a preliminary approval for a development. A development approval can be a combination of a preliminary approval and a development permit.²¹

A development approval in the PA means:

- a) the development approval as changed from time to time; and
- b) includes the development conditions imposed on the approval.²²

It is an offence under the PA to carry out assessable development, unless all necessary development permits are in effect.²³

Public Notification of Development Applications

Notice of a Development Application

A person may make a development application, including for a preliminary approval.²⁴ However, an application cannot be made for a prohibited development.

N.B. Not all development applications need to be publicly notified.

Public notification is only required if:

- a) any part of the development application requires impact assessment; or
- b) the application includes a variation request to change the planning scheme.²⁵

²⁰ PA s 49(1).

²¹ Ibid s 49(1).

²² Ibid s 49(5).

²³ Ibid s 162(1).

²⁴ Ibid s 50 (1).

²⁵ Ibid s 53(1). See also footnote 14 for the meaning of a variation request.

Public notice of the development application must be given in the way stated in the development assessment rules.²⁶

The development assessment rules are rules made by the Minister administering the PA. They provide rules guiding the development assessment process, including about how and when notification is to be carried out under section 53 of the PA, and when an application may need to be re-notified.²⁷

Any notice of a development application must state that:

- a) a person may make a submission about the application to the assessment manager; and
- b) the stated period within which any such submission must be made.²⁸

Making a submission

Any person, other than the applicant or a referral agency, may make a submission about the application.²⁹

However, for a submitter to have appeal rights under the PA in respect to the development application, their submission must be “properly made”.

Submissions made about the application remain effective even if the application is re-notified.³⁰

The relevant period for making a submission is set out in section 53 (4) of the PA:

- a) for an application that includes a variation request – 30 business days after the notice is given; or
- b) for an application of a type prescribed by regulation – the period, of more than 15 business days after the notice is given, prescribed for the application; or
- c) for any other application – 15 business days after the notice is given.³¹

The notice period must not include any day between 20 December of a year and 5 January of the next year.³²

Properly Made Submissions

Schedule 1 of the PA sets out the matters that may be appealed to a development tribunal or the Planning and Environment Court (**P&E Court**), and the person who may appeal.

²⁶ PA s 53(2).

²⁷ Ibid s 68(1)(a).

²⁸ PA s 53(4). Section 53 (4)(b) specifies the relevant periods that apply for the making of a submission. Different periods apply.

²⁹ Ibid s 53(5).

³⁰ Ibid s 53(6).

³¹ Ibid s 53(4).

³² Ibid s 53(9).

Only an eligible submitter can appeal. An eligible submitter for a development application or change application, means a submitter:

- a) whose submission was not withdrawn before the application was decided; and
- b) who has not given the assessment manager a notice stating they will not be appealing before the appeal period ends for the application.³³

However, such a submission must be a **properly made submission**. A submission is properly made where it meets the following requirements:

- a) It is written;
- b) it is signed by each person who made the submission;
- c) it is received during the period fixed under the PA for making the submission;
- d) it states the name and residential or business address of all persons making the submission;
- e) it states the grounds, and the supporting facts and circumstances;
- f) it states one postal or electronic address for service; and
- g) it is made to the assessment manager.³⁴

Submissions that are not properly made do not have to be considered. However, they may be accepted at the assessment manager's discretion.

If a submission is not properly made, even if it has been accepted by the assessment manager, the submitter does not have the right to appeal.

Only the **principal submitter**, receives the decision notice providing the assessment manager's decision.³⁵ The principal submitter, for a properly made submission is:

- a) if the submission is by one person – the person; or
- b) the submitter that the submission identifies as the principal submitter, or
- c) if (b) does not apply, the submitter whose name first appears in the submission.

Relevant Grounds for Submissions

When considering the grounds of a submission, it is important to rely on facts and circumstances that focus on planning issues – such as matters relating to:

- whether the proposed development is consistent with the intent for the area expressed in the relevant planning instruments;
- whether the built form of the proposed development is compatible with surrounding land uses and appropriately addresses the existing streetscape;

³³ PA Schedule 2.

³⁴ Ibid Schedule 2.

³⁵ Ibid s 63(1)(e) and s 76(2)(b)(i).

- any potential traffic and car parking issues associated with the development; and
- possible impacts from the proposed development on drainage and flooding in the surrounding area.

The Minister administering the PA may also include in the development assessment rules guidelines for how assessment managers should consider properly made submissions.³⁶

Top tips for making a submission

If you're planning on making a submission on a development application, keep the following in mind:

- a) A submission should be factually based and should demonstrate a clear understanding of the nature and extent of the development application.
- b) The submission must be based on town planning grounds, and not commercial or personal reasons.
- c) The number of submissions received is not as important to assessment managers as the quality of the submissions.
- d) Sometimes a developer may offer a submitter the opportunity to visit the development site in hopes of overcoming concerns. If the submitter does not accept this offer, or fails to inspect the development application documents, their submission may be given less weight by the local government and the Court if they become aware of this.
- e) Submitters who possess certain expertise should ensure they do not lose their objectivity when making a submission to ensure that the submission is given the full weight warranted.
- f) Submissions by business competitors must not be based on private financial factors. The mere threat of economic competition is not a sufficient ground.

Accessing the Details of a Development Application

In order to make an effective submission on a development application, it is important that the submitter acquires a good understanding of the nature and extent of the proposed development.

The potential submitter should review the development application forms and supplementary material.

While the application documents will vary depending on the type, size and scale of the development being considered, the following documents should be reviewed:

- the statutory forms;
- the overarching report describing the development,
- the town planning and other consultants' reports, and

³⁶ PA s 68(1)(b).

- Maps, drawings and photographs.

The consultants' reports vary, but may include a town planning report, a traffic impact assessment, environmental impact assessment, water quality and hydrology assessments, landscaping report, and a need assessment.

For each development application, the assessment manager must keep the following documents available for inspection and purchase:

- a) The application documents and supplementary material;
- b) Any information request and responses;
- c) Any properly made submissions; and
- d) Any referral agency's response.³⁷

Many local governments now provide the information online, typically under a portal named 'PD Online on the local government website. You may need the application number or the address of the property to find the relevant application material. If in doubt, contact the relevant assessment manager to seek help.

Despite these provisions, an individual is still able to seek information from a government agency under the *Right to Information Act 2009* (Qld) (**RTI Act**) where the information is not available under the public register. If the material is available under the public register and has not been provided, contact the assessment manager first as this should be a quicker method of obtaining the information compared to the RTI Act.

Amending and withdrawing submissions

Anyone who has made a properly made submission may amend or withdraw their submission by notifying the assessment manager. Any amendments must be made before the date by which submissions must be received. A submission can be withdrawn at any time before the application is decided.³⁸

Changes and lapsing of the application

Changes in the application

Submissions made about a development application remain effective even if public notice is given again under the PA.³⁹ Submissions also remain relevant if the development application is changed, and public notice is given again.

³⁷ PA s 264.

³⁸ Clause 19.2 of the Draft *Development Assessment Rules* dated 17 March 2017.

³⁹ PA s 53.

Application lapses

If a development application (the original application) lapses and, within a year, another development application (the latter application) is made that is significantly similar to the original application, any submissions for the original application will apply to the latter application. However, it can be difficult to determine whether the two applications are substantially similar, so it's always wise to resubmit just in case.

Example submission

[# Insert Your name, address, phone number]

[#Insert date]

[#Insert mailing address OR email]

Greater Flagstone UDA,
PO Box 2202,
Brisbane, 4001
Email: greaterflagstone@ulda.qld.gov.au

Dear Sir/Madam [Alternatively, insert name of relevant Assessment Manager],

Re: [#Insert Development Application No] [#Insert closing date]

My main issues are:

- Community has never been consulted about the proposed North Maclean industry and business area (under Beaudesert Council or Logan Council)
- High density urban living proposed
- No koala surveys or detailed fauna studies have ever been conducted for the Greater Flagstone or Mt Lindsay North Beaudesert Area.
- Existing planning does not protect major bioregional corridors, which is compounded by planning for more intense high density development and infrastructure
- The State government has had 6 years to conduct detailed fauna surveys (quolls, koalas, GBS, frogs: wallum froglet, green thighed frogs). There has been only a brief desktop study of 19 sites assessed (DERM can't confirm were all visited for on site assessment)
- Future urban development based on no guarantee of future public transport (e.g. rail post 2031)

The changes that I propose are:

- The removal of the North Maclean industry and business area (to be undeclared) – protect as core habitat area

- High density urban development at Greenbank West and East to be removed (undeclared) from Proposed Development Scheme – protect as core habitat area
- Need to change regional plan and local planning instruments to protect biodiversity values
- Identification and protection of core habitat areas for protecting biodiversity, with ecological corridors to connect these core habitat areas to state bioregional corridors and local ecological corridors
- Wider ecological corridors are needed
- To provide core habitat areas and ecological corridors that are not degraded or impacted by future road corridors (new or to be upgraded) or infrastructure corridors

I request a chance to meet and talk with you about my issues

Yours faithfully,

[#Insert name AND signature]

CC [#Copy to Jackie Trad, Minister for Planning, deputy.premier@ministerial.qld.gov.au; Annastacia Palaszczuk, Premier thepremier@premiers.qld.gov.au; Steven Miles environment@ministerial.qld.gov.au and your Local Councillor, Local State MP]

Where can I find more information?

- Visit the EDO [website](#) to read samples of our submissions to public consultations and parliamentary inquiries
- Read the Queensland Parliament's Guide on [Making A Submission to a Committee Inquiry](#)