



Environmental  
Defenders Office

## Code or Impact Assessable Developments in Queensland

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*While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.*

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### What is this factsheet about?

This factsheet provides helpful hints describing how the decision is made as to whether a development is code or impact assessable under the [Planning Act 2016 \(Qld\)](#) (**PA**). This may help you to understand this process, as well as assist in determining whether a proposed use is being correctly assessed.

If a development is being incorrectly assessed, there is a power for third parties to seek a declaration in the [Planning and Environment Court](#) to declare that the development should be assessed as impact assessable.

**N.B.** You should only apply to the Court with good legal grounds. We strongly recommend you seek legal advice prior to making any application to Court to help determine whether your legal grounds are valid.

The focus of this factsheet is on the PA, which replaced the *Sustainable Planning Act 2009* (QLD) (**SPA**) on 3 July 2017.

**N.B.** The process for determining whether a proposed use is subject to code or impact assessment is generally the same.

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## 1. Summary of steps

#	Steps	Action
1	Check what type of development is being applied for	Find out the proposed use or uses of land by reading the development application documents. For example, it might be for a material change of use for residential development or a shopping centre, it might be for operational works for clearing vegetation or for building works for a car park.
2	Check the <a href="#">Planning Regulation 2017 (Qld)</a> (PR)	The PR Schedules 9 and 10 lists types of developments, and whether they are code or impact assessable. Schedules 6 and 7 relate to assessable and accepted development.
3	Review the local government planning scheme for how the development type is defined	Look in particular for definitions of the particular development type being applied for. This will assist in determining how the development will be assessed. Undefined uses are generally impact assessable.
4	Identify the relevant zone for the land under the planning scheme	Zones map areas of land that are designated for certain purposes. They are provided under planning schemes, typically in a specified chapter. Using a zone mapping tool can help determine whether a development adheres to the designated zoning of the land, and what the assessment benchmarks are.
5	Review the 'table of assessment' in the planning scheme for whether development is code or impact assessable	Using the relevant use definition and the zone, look up the relevant table of assessment in the relevant planning scheme. The table will also provide information about how the development will be assessed.
6	Do any overlays or local area plans apply to change the category of development?	An overlay map highlights additional considerations for development, such as flooding and heritage considerations, and can change the category of assessment. Relevant overlays are usually listed as a subset of the tables of assessment.
7	What happens where there is a conflict between the zone and the overlay?	Where development categories differ between a zone and an overlay, the more cautious approach is favoured (i.e. it will generally be impact assessable).

## 2. What is 'code assessment' and 'impact assessment'?

There are various differences between code assessment and impact assessment, including the rights of the public to be involved, and how the applications are assessed.

### (a) Public opportunities to be involved in decision making

For communities, the biggest difference between code and impact assessment is the power to formally have community concerns heard as part of the assessment process.

### Code assessable development

Development that is not open to any formal community rights to provide submissions or appeal decisions. However, informal communication with the decision maker and developer is still possible.

### Impact assessable development

Development that is subject to a requirement to publicly consult with the community, whereby anyone can provide a submission to the development application. Those who put in a 'properly made submission' also have the power to appeal the decision to the Planning and Environment Court.

## **(b) Differences in how the applications are assessed**

### Code assessments

Code assessment is an assessment that must be carried out only:

- Against the assessment benchmarks in a categorising instrument for the development; and
- Having regard to any matters prescribed by regulation.<sup>1</sup>

However, a code assessable development can be approved even if it does not comply with all of the assessment benchmarks.<sup>2</sup> The assessment benchmarks are stated in the planning instruments. In a planning scheme, the assessment benchmarks may include codes, objectives or desired outcomes.<sup>3</sup>

The assessment benchmarks will be the *ruler* or *gauge* against which the development *must be* assessed. As such, the benchmarks will be the most important *determinative* factor in deciding the development application.

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<sup>1</sup> Section 45(3) of the [Planning Act 2016 \(Qld\)](#) ('**Planning Act**').

<sup>2</sup> Planning Act section 60(2)(b).

<sup>3</sup> Planning Act section 43(1); see also the [Planning Regulation 2017 \(Qld\)](#).

See below an example of an assessment benchmark from the Brisbane City Plan 2014:

**Table 5.8.1—Operational work**

Zone	Categories of development and assessment	Assessment benchmarks
Any zone	<b>Assessable development—Code assessment</b>	
	If filling or excavation, where resulting in a retaining wall greater than 1m or an increase in depth or height of the ground level or finished design level by 1 vertical metre or more	<a href="#">Filling and excavation code</a> <a href="#">Operational work code</a>
	If filling or excavation for an artificial stormwater channel	<a href="#">Filling and excavation code</a> <a href="#">Operational work code</a> The applicable <a href="#">zone code</a>
	If other operational work preceding a ROL or MCU which is assessable development	<a href="#">Operational work code</a> <a href="#">Prescribed secondary code</a>
	If prescribed tidal work	<a href="#">Prescribed tidal work code</a> <a href="#">Prescribed secondary code</a> The applicable <a href="#">zone code</a>
	<b>Assessable development—Impact assessment</b>	
If extracting gravel, rock, sand or soil from the place where it occurs naturally	The planning scheme including: <a href="#">Extractive industry code</a>	
<b>Accepted development</b>		
Any other operational work not listed in this table.		

Editor's note—The above categories of development and assessment apply unless otherwise prescribed in [the Regulation](#)

Editor's note—The default category of assessment is accepted unless otherwise prescribed in [the Regulation](#).

Code assessable developments can also only be refused if it is not possible to condition them in a way that they would comply with the applicable assessment benchmarks.<sup>4</sup> Also, code assessment is not required to advance the purposes of the PA, on the basis that the assessment benchmarks have been drafted to themselves advance the purposes of the PA.<sup>5</sup>

### Impact assessments

Impact assessment is an assessment that:

- Must be carried out–
  - against the assessment benchmarks in a categorising instrument for the development, and;
  - having regard to any matters prescribed by the regulation; and
- May be carried out against, or having regard to, any other relevant matter, other than a person's personal circumstances, financial or otherwise;<sup>6</sup>
- Should be carried in a way that advances the purposes of the PA.

This means that the assessment for impact assessable development can be against a much broader range of matters than code assessable development, however, there is uncertainty about the weight that may be given to matters that are not the assessment benchmarks. Under the SPA the decision maker needed to have 'sufficient grounds' to

<sup>4</sup> Planning Act section 60(2)(d).

<sup>5</sup> Planning Act section 45(4).

<sup>6</sup> Planning Act section 45(5).

be inconsistent with an assessment benchmark.<sup>7</sup> This test has not been provided in the PA. As Court decisions are made under the PA the Court will provide guidance as to how decision makers must interpret the new PA provisions.

### 3. Detailed steps: How can I check whether a particular development should be assessed by code or impact assessment?

#### **Step 1 – What kind of development is being applied for?**

Firstly, it is necessary to ascertain the proposed use or uses of the subject land. This will be stated in the development application documents. For example, it might be for a material change of use for residential development or a shopping centre, it might be for operational works for clearing vegetation or for building works for a car park.

An existing use or uses of the subject land will be identified by the activities that are carried out on that land.

Here is a list of definitions for commonly used development (from Schedule 2 of the PA):

Material change of use: means any of the following that a regulation made under PA section 284(2)(a) does not prescribe to be minor change of use—

- (a) the start of a new use of the premises;
- (b) the re-establishment on the premises of a use that has been abandoned;
- (c) a material increase in the intensity or scale of the use of the premises.

Operational works: means work, other than building work or plumbing or drainage work, in, on, over or under premises that materially affects premises or the use of premises.

Reconfiguration of a lot: means—

- (a) creating lots by subdividing another lot; or
- (b) amalgamating 2 or more lots; or
- (c) rearranging the boundaries of a lot by registering a plan of subdivision under the Land Act or Land Title Act; or
- (d) dividing land into parts by agreement rendering different parts of a lot immediately available for separate disposition or separate occupation, other than by an agreement that is—
  - (i) a lease for a term, including renewal options, not exceeding 10 years; or

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<sup>7</sup> Section 326(1)(b) of the *Sustainable Planning Act 2009*.

- (ii) an agreement for the exclusive use of part of the common property for a community titles scheme under the Body Corporate and Community Management Act 1997; or
- (e) creating an easement giving access to a lot from a constructed road.

**Building work:**

(a) means—

- (i) building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure; or
- (ii) works regulated under the building assessment provisions; or
- (iii) excavating or filling for, or incidental to, the activities stated in subparagraph (i); or
- (iv) excavating or filling that may adversely affect the stability of a building or other structure, whether on the premises on which the building or other structure is situated or on adjacent premises; or
- (v) supporting (vertically or laterally) premises for activities stated in subparagraph (i); and

(b) for a Queensland heritage place, includes—

- (i) altering, repairing, maintaining or moving a built, natural or landscape feature on the place; and
- (ii) excavating, filling or other disturbances to premises that damage, expose or move archaeological artefacts, as defined under the Heritage Act, on the place; and
- (iii) altering, repairing or removing artefacts that contribute to the place's cultural heritage significance (furniture or fittings, for example); and
- (iv) altering, repairing or removing building finishes that contribute to the place's cultural heritage significance (paint, wallpaper or plaster, for example); and

(c) does not include undertaking—

- (i) operations of any type and all things constructed or installed that allow taking or interfering with water under the Water Act 2000; or
- (ii) tidal works; or
- (iii) works for reconfiguring a lot.

**Exemption certificate may apply – new initiative under the Planning Act**

Note that since the commencement of the PA, a development permit is not required for certain assessable development on premises if there is an exemption

certificate for that development.<sup>8</sup> An exemption certificate can only be given in certain circumstances.<sup>9</sup>

Read: EDO Factsheet on **Community Rights to be Involved in Development Assessment** for more information on exemption certificates.

## **Step 2 – Check the [Planning Regulation 2017 \(Qld\)](#)**

Once you know the use being applied for, the first port of call for determining how a development will be assessed in the [Planning Regulation 2017 \(Qld\)](#) (**PR**).

Schedules 9 and 10 of the PR: state various items of development which are taken to be assessable development:

- (a) the category of assessment – whether it is code assessment or impact assessment;
- (b) the applicable assessment benchmarks;
- (c) the matters code assessment must have regard to;
- (d) matters impact assessment must have regard to;
- (e) if the development is stated in Schedule 10 to be prohibited development.

Have a look at the section ‘Category of Assessment’ on each Table 1 in each Division. Here it will say whether the development type should be assessed by ‘code’ or ‘impact’ assessment.

Also for your information:

- Schedule 6: lists development that cannot under any circumstances be stated to be assessable development by a planning scheme.
- Schedule 7: lists development that is taken to be accepted development – development for which development approval is not required.

## **Step 3 – Review the local government planning scheme**

The second port of call to determine whether a use is code assessable or not is the local government planning scheme (**planning scheme**).

- (a) Check the definition for the use in the relevant planning scheme

Firstly, examine the ‘use’ definitions of the relevant planning scheme (not the ‘administrative’ definitions). These definitions are normally found in one of the schedules to the planning scheme.

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<sup>8</sup> Planning Act section 46(1).

<sup>9</sup> Planning Act section 46(3).



Some planning schemes provide examples of a use definition and also helpfully provide examples to clarify what are not included for a particular use definition.

Any use not listed in the table of use definitions is generally taken to be an undefined use for the planning scheme. An undefined use is discussed later in this factsheet.

See below an example of the definitions and 'use' definitions from the Brisbane City Plan 2014:

## Schedule 1 Definitions

### SC1.1 Use definitions

#### SC1.1.1 Defined uses

- (1) The use definitions listed in [Table SC1.1.1.A](#) have a particular meaning stated in [Table SC1.1.1.B](#) for the purpose of the planning scheme.
- (2) Any use not listed in [Table SC1.1.1.B](#) column 1 is an undefined use.

Note—Development comprising a combination of defined uses is not considered to be an undefined use.

- (3) The use definitions listed here are the definitions used in this planning scheme.
- (4) A use listed in [Table SC1.1.1.B](#) column 1 has the meaning set out beside that term in column 2.
- (5) Column 3 of [Table SC1.1.1.B](#) identifies examples of the types of activities that are consistent with the use identified in column 1.
- (6) Column 4 of [Table SC1.1.1.B](#) identifies examples of activities that are not consistent with the use identified in column 1.
- (7) Columns 3 and 4 of [Table SC1.1.1.B](#) are not exhaustive lists.
- (8) Uses listed in [Table SC1.1.1.B](#) columns 3 and 4 which are not listed in column 1 do not form part of the definition.

- Part 2 State planning provisions
- Part 3 Strategic framework
- Part 4 Local government infrastructure plan
- Part 5 Tables of assessment
- Part 6 Zones
- Part 7 Neighbourhood plans
- Part 8 Overlays
- Part 9 Development codes
- Part 10 Other plans
- Schedule 1 Definitions
  - Use definitions
  - Defined activity groups
  - Industry thresholds
  - Administrative definitions
  - Brisbane City Council administrative definitions
- Schedule 2 Mapping
- Schedule 3 Local government infrastructure plan mapping and tables
- Schedule 4 Notations required under the Planning Act 2016
- Schedule 5 Designation of premises for development
- Schedule 6 Planning scheme policies (PSP)
  - Appendix 1 Index and glossary of abbreviations and acronyms
  - Appendix 2 Table of amendments

**Table SC1.1.1.A—Index of use definitions**

Index of use definitions		
<a href="#">Adult store</a>	<a href="#">Health care service</a>	<a href="#">Relocatable home park</a>
<a href="#">Agricultural supplies store</a>	<a href="#">High impact industry</a>	<a href="#">Renewable energy facility</a>
<a href="#">Air service</a>	<a href="#">Home-based business</a>	<a href="#">Research and technology industry</a>
<a href="#">Animal husbandry</a>	<a href="#">Hospital</a>	<a href="#">Residential care facility</a>
<a href="#">Animal keeping</a>	<a href="#">Hotel</a>	<a href="#">Resort complex</a>
<a href="#">Aquaculture</a>	<a href="#">Indoor sport and recreation</a>	<a href="#">Retirement facility</a>
<a href="#">Bar</a>	<a href="#">Intensive animal industry</a>	<a href="#">Roadside stall</a>
<a href="#">Brothel</a>	<a href="#">Intensive horticulture</a>	<a href="#">Rooming accommodation</a>
<a href="#">Bulk landscape supplies</a>	<a href="#">Landing</a>	<a href="#">Rural industry</a>
<a href="#">Car wash</a>	<a href="#">Low impact industry</a>	<a href="#">Rural workers' accommodation</a>
<a href="#">Caretaker's accommodation</a>	<a href="#">Major electricity infrastructure</a>	<a href="#">Sales office</a>
<a href="#">Cemetery</a>	<a href="#">Major sport, recreation and entertainment facility</a>	<a href="#">Service industry</a>
<a href="#">Childcare centre</a>	<a href="#">Marine industry</a>	<a href="#">Service station</a>
<a href="#">Club</a>	<a href="#">Market</a>	<a href="#">Shop</a>
<a href="#">Community care centre</a>	<a href="#">Medium impact industry</a>	<a href="#">Shooping centre</a>
<a href="#">Community residence</a>	<a href="#">Motor sport facility</a>	<a href="#">Short-term accommodation</a>
<a href="#">Community use</a>	<a href="#">Multiple dwelling</a>	<a href="#">Showroom</a>
<a href="#">Crematorium</a>	<a href="#">Nature-based tourism</a>	<a href="#">Special industry</a>
<a href="#">Cropping</a>	<a href="#">Nightclub entertainment facility</a>	<a href="#">Substation</a>
<a href="#">Detention facility</a>	<a href="#">Non-resident workforce accommodation</a>	<a href="#">Telecommunications facility</a>
<a href="#">Dual occupancy</a>	<a href="#">Office</a>	<a href="#">Theatre</a>
<a href="#">Dwelling house</a>	<a href="#">Outdoor sales</a>	<a href="#">Tourist attraction</a>
<a href="#">Dwelling unit</a>	<a href="#">Outdoor sport and recreation</a>	<a href="#">Tourist taxi</a>
<a href="#">Educational establishment</a>	<a href="#">Outstation</a>	<a href="#">Transport depot</a>
<a href="#">Emergency services</a>	<a href="#">Park</a>	<a href="#">Utility installation</a>
<a href="#">Environment facility</a>	<a href="#">Parking station</a>	<a href="#">Veterinary service</a>
<a href="#">Extractive industry</a>	<a href="#">Party house</a>	<a href="#">Warehouse</a>
<a href="#">Food and drink outlet</a>	<a href="#">Permanent plantation</a>	<a href="#">Wholesale nursery</a>
<a href="#">Function facility</a>	<a href="#">Place of worship</a>	<a href="#">Winery</a>
<a href="#">Funeral parlour</a>	<a href="#">Port service</a>	
<a href="#">Garden centre</a>		
<a href="#">Hardware and trade supplies</a>		

- Part 2 State planning provisions
- Part 3 Strategic framework
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- Part 5 Tables of assessment
- Part 6 Zones
- Part 7 Neighbourhood plans
- Part 8 Overlays
- Part 9 Development codes
- Part 10 Other plans
- Schedule 1 Definitions
  - Use definitions
  - Defined activity groups
  - Industry thresholds
  - Administrative definitions
  - Brisbane City Council administrative definitions
- Schedule 2 Mapping

**Table SC1.1.1.B—Use definitions**

Column 1 Use term	Column 2 Use definition	Column 3 Examples include	Column 4 Does not include the following examples
Adult store Editor's note—The use term is defined in the Planning Regulation 2017 - Regulated Requirements	Adult store means the use of premises for the primary purpose of displaying or selling — (a) sexually explicit materials; or (b) products and devices that are associated with, or used in, a sexual practice or activity.	Sex shop	Shop, newsagent, registered pharmacist or video hire, where the primary use of these are concerned with: <ul style="list-style-type: none"> <li>• the sale, display or hire of printed or recorded matter (not of a sexually explicit nature); or</li> <li>• the sale or display of underwear or lingerie; or</li> <li>• the sale or display of an article or thing primarily concerned with or used in association with a medically recognised purpose.</li> </ul>

(b) Does the development involve a combination of different uses?

This exercise can be difficult because land subject to a development may comprise a combination of defined uses. Sometimes a planning scheme will define a combination of different uses as ‘undefined use’ expressly. Where this is not stated, it simply means the development on the land may have more than one defined use for the purposes of the planning scheme.

The current correct approach is instead to construe the relevant statutory definitions by reference to the language of the planning scheme viewed as a whole. Accordingly, more than one use definition may be applicable where there are separate uses carried on upon the land. Previously a mixed use development would have been decided via the “best fit” definition approach, being the definition that “best fit” the development should be applied, but this is no longer the correct approach.<sup>10</sup>

Under the new PA, a “use” of premises now includes an ancillary use of the premises.<sup>11</sup> An ancillary use does not have to be incidental to and necessarily associated with the primary lawful use of the premises, as was previously required under the SPA; it is a much broader concept.<sup>12</sup> Therefore, various uses may be considered a single use with ancillary related uses consumed in this use, meaning there is less likelihood a separate development assessment may apply for each use.

Modern planning schemes also often list uses according to defined activity groups. Where provided, these tables assist in an understanding of the nature of a particular use as defined in the relevant planning scheme.

(c) No definition provided for the use?

Generally a planning scheme may state that for a material change of use, if the use is not listed or defined, it is taken to be impact assessable.

#### **Step 4 – Identify the relevant zone for the land under the planning scheme**

The next step is to identify the relevant zone under the planning scheme that applies to the particular subject land.

A zone is a land-use planning tool in the planning scheme which determines what uses can and cannot be carried out on the subject land. Zones organise a planning scheme area in a way that facilitates the location of the preferred or acceptable land uses.

The zones are mapped and are generally included in a mapping schedule to the relevant planning scheme. Most modern planning schemes have as part of its planning scheme an interactive mapping tool. By searching the relevant address of the property, the

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<sup>10</sup> See *AAD Design Pty Ltd v Brisbane City Council* [2012] QCA 44.

<sup>11</sup> Schedule 2 of the Planning Act.

<sup>12</sup> The Macquarie Dictionary (fifth edition) defines “ancillary” to mean: 1. accessory; auxiliary; 2. an accessory, a subsidiary or helping thing or person.

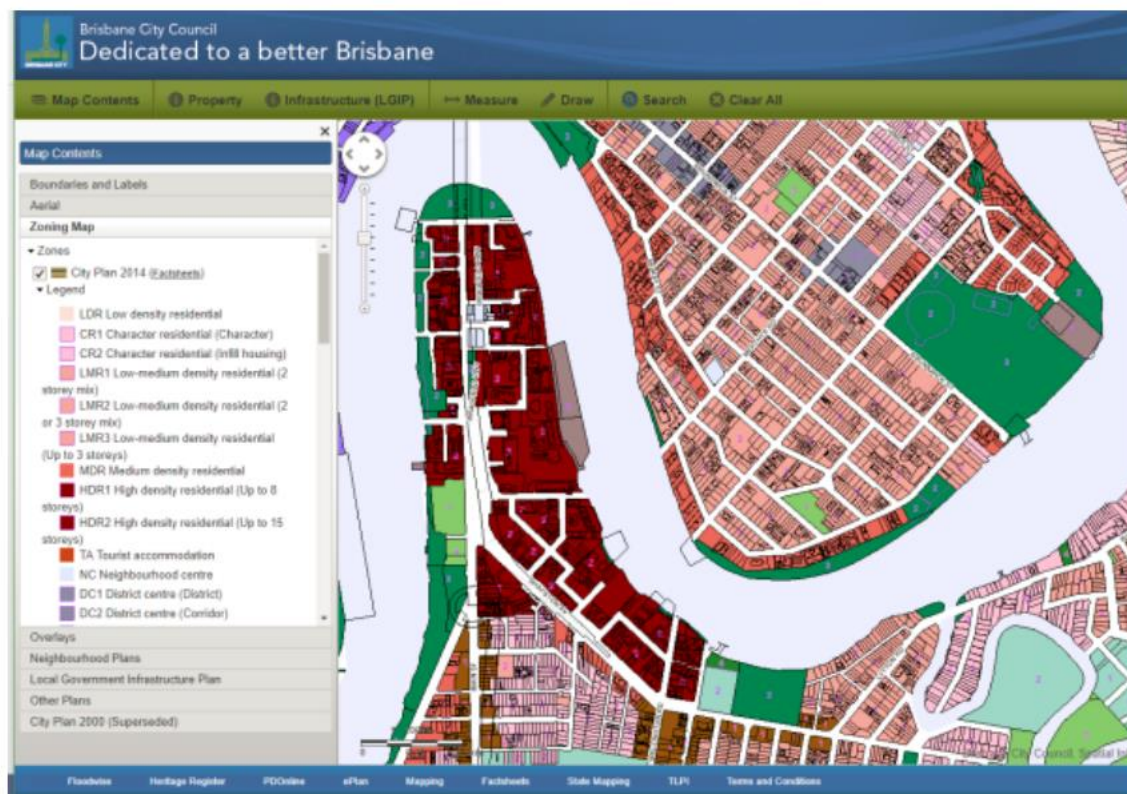
interactive mapping tool will identify the particular zone applicable to that property. For example, here is a link to [Brisbane City Council's interactive mapping tool](#), and an example below.

The relevant zone and zone code will also identify the categories of development, as well as identify:

- (a) the assessment benchmarks for the relevant zone; and
- (b) the required outcomes for accepted development, subject to any requirements that may be contained in a zone code;
- (c) any 'precincts' that apply in the zone.

'Precinct' planning was undertaken under the SPA for the purpose of identifying and providing a 'blueprint' for sites where there are particular state planning interests or development issues for which unique planning and investigation was required. Zone code provisions may impose additional outcomes for development in the relevant precinct. These precinct provisions are essentially variations to the otherwise applicable provisions of the zone code.

See below an example of a zoning map from the Brisbane City Plan 2014:



### **Step 5 – Review the ‘table of assessment’ in the planning scheme for whether development is code or impact assessable**

Once the relevant use definition and the zone have been identified the next step is to go to the relevant table of assessment under the relevant planning scheme.

Assuming that the relevant category of development is a material change of use (i.e. the start of a new use or a material increase in the intensity or scale of an existing use) that particular table of assessment will identify for that use in that zone the category of assessment for the development, i.e. whether it should be assessed as code or impact assessable development.

The table of assessment also provides information as to:

- (a) the category of development – prohibited, accepted, or assessable;
- (b) the requirements for accepted development;
- (c) the applicable assessment benchmarks for the development.

### **Step 6 – Do any overlays or local area plans apply to change the category of development?**

If either an overlay or a local area plan applies, these instruments of the planning scheme must be examined as they can elevate the level of assessment for a particular use in a zone from one assessment to a higher category of assessment (i.e. for example from code assessment to impact assessment).

Usually, a planning scheme will list as a subset of the tables of assessment the applicable overlays. That table will, in turn, identify where an overlay changes the category of assessment from that stated in a zone.

Review the relevant mapping in the planning scheme for the site to determine whether an overlay or local area plan applies to that site.

An overlay map identifies different features that also need to be considered when developing land, for example, flooding and heritage. An overlay map may apply to all or part of a parcel of land. A parcel of land may also be affected by more than one overlay. Overlays may not only affect the type and category of development but also the design requirements such as height, landscaping or vehicle access.

## Step 7 – What happens where there is a conflict between the zone and the overlay?

If development is identified as having a different category of development or category of assessment under a zone than under an overlay, the planning scheme may state the highest category of development or assessment applies, such as:

- (a) accepted development subject to requirements prevails over accepted development without any assessment requirements;
- (b) code assessment prevails over accepted development;
- (c) impact assessment prevails over code assessment and accepted development.

These items may be stated as ‘Notes’ before or after the table of assessment in the planning scheme, for example see this excerpt ‘Note-’ from the Brisbane City Plan 2014:



## 4. Are there legal rights to challenge incorrect development assessment procedures?

The issue whether an incorrect development assessment process was applied by a local government may arise during assessment of the application or after the approval has been granted (whether or not the use has been commenced).

The two key legal powers in these circumstances are to seek from the [Planning and Environment Court](#) either:

- A declaration; or
- An enforcement order.

## 5. Where can I get more information?

Read: EDO Factsheet on **Community Rights to be Involved in Development Assessment** for more information on exemption certificates.

Read: EDO Factsheet on **Appealing, Enforcing Development Approvals and Seeking Declarations in Queensland** for more information on appealing to the Planning and Environment Court