

Queensland's new planning system

What it means for the community



Agenda

- The new planning framework
- Key differences and benefits to community
- Key elements explained:
 - Plan-making
 - Development assessment
 - Dispute resolution
- Questions

What is town planning

- Planning looks at current and future trends including population and societal changes in order to effectively manage the land use
- Planning ensures land areas are planned for effectively to support the local community and economy
- Land-use plans set out the vision for a local area which leads to development to achieve it.



Our new planning system

- On 3 July 2017 new planning legislation started to operate in Queensland.
- The new legislation – the *Planning Act 2016* – was passed by QLD parliament in May 2016.
- The Planning Act sets the foundation for a new and contemporary planning system in Queensland.
- Development of the new legislation was done following extensive public consultation.

Why we needed new legislation

- The previous legislation – the *Sustainable Planning Act 2009* – was complicated, and made the system hard to use and get involved.
- Parts didn't work well, and the legislation focused too heavily on process.



What the new planning system aims to achieve?

- A more transparent system
- A system that everyone can understand
- A system that provides more opportunities for community to get involved

Key differences

- Everyone can now view all reasons for development decisions.
- Stronger requirements for decision-makers when reviewing code assessable development.
- More time for the community to have their say on draft planning schemes.
- Simplified framework of planning instruments.

The planning framework

Legislation

Establishes the framework for planning and development assessment in Queensland

Regulation

Supports the operation of the legislation by setting triggers, assessment manager & referral agencies, etc.

State planning instruments

Sets out planning matters the state is most concerned about - must be addressed in local instruments

Statutory instruments

‘How’ local instruments are made or changed, and how development assessment is to be undertaken

Local planning instruments

Local government planning intent, which must encompass the state interests

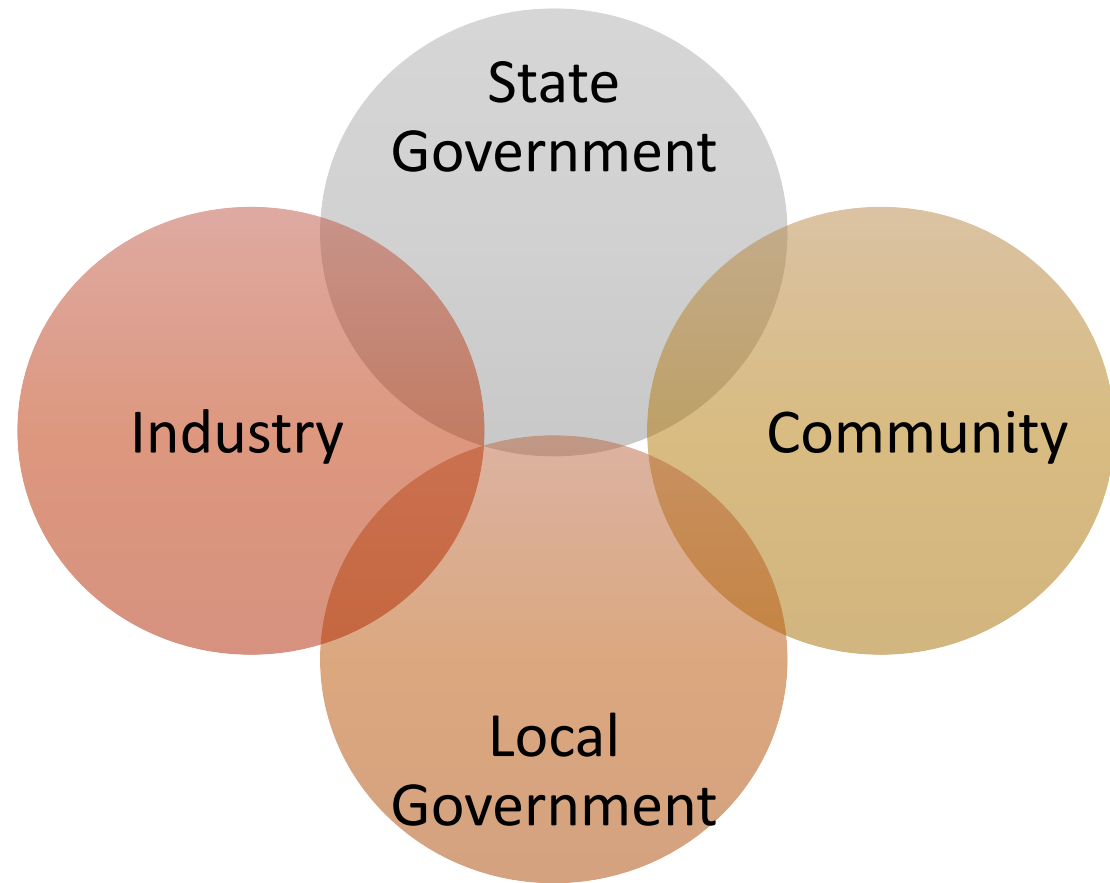
Previous and new framework

	Previous system	New system
Legislation	<ul style="list-style-type: none"> • Sustainable Planning Act • Sustainable Planning (Consequential) & other Legislation Amendment Act 	<ul style="list-style-type: none"> • <i>Planning Act 2016</i> • <i>Planning & Environment Court Act</i> • <i>Planning (Consequential) & other Legislation Amendment Act</i>
Regulation	<ul style="list-style-type: none"> • Sustainable Planning Regulation 	<ul style="list-style-type: none"> • Planning Regulation 2017
State planning instruments	<ul style="list-style-type: none"> • State Planning Policy • Regional Plans • State Planning Regulatory Provisions • Queensland Planning Provisions 	<ul style="list-style-type: none"> • State Planning Policy • Regional Plans
Statutory Instruments	<ul style="list-style-type: none"> • Making & Amending Local Planning Instruments • LGIP Guidelines • State Development Assessment 	<ul style="list-style-type: none"> • Minister's Guidelines & Rules • Development Assessment Rules • State Development Assessment
Local planning instruments	<ul style="list-style-type: none"> • Planning Schemes • Temporary Local Planning Instruments • Planning Scheme Policies 	

A quick recap – the main players



Who are the main players



State government

- Sets the framework - legislation and supporting planning instruments.
- Planning Minister plays a key role in approving plans.
- Establishes statewide planning matters that must be protected.
- Provides advice on applications where a state planning matter is involved.



Local government

- **Key** operator in the planning system.
- Develops planning schemes to guide development and growth in the local area.
- Works with the local community to develop its local planning scheme.
- Is the key decision maker on development applications made in its local area.



Industry

- **Make** development proposals against the planning scheme and build communities.
- Work with local council to develop parcels of land identified for development.
- Support the local economy with jobs and investment.



Community

- **Contribute** to the development of the local planning scheme.
- Can have a say on certain development types.
- Can appeal decisions if made a submission.
- Provide feedback to the state when state documents are open for consultation.



The key elements of planning

Plan-making	Development assessment	Dispute resolution
<p>The plans that set out what development goes where, and how it will be assessed.</p> <p>What planning matters must be protected for future generations</p>	<p>What is development, how applications should be 'made' and 'assessed' and who will make the decision.</p> <p>The planning scheme guides what development happens in a local area.</p>	<p>Supporting court and tribunal to guide disputes, when they arise.</p>

Plan-making in QLD

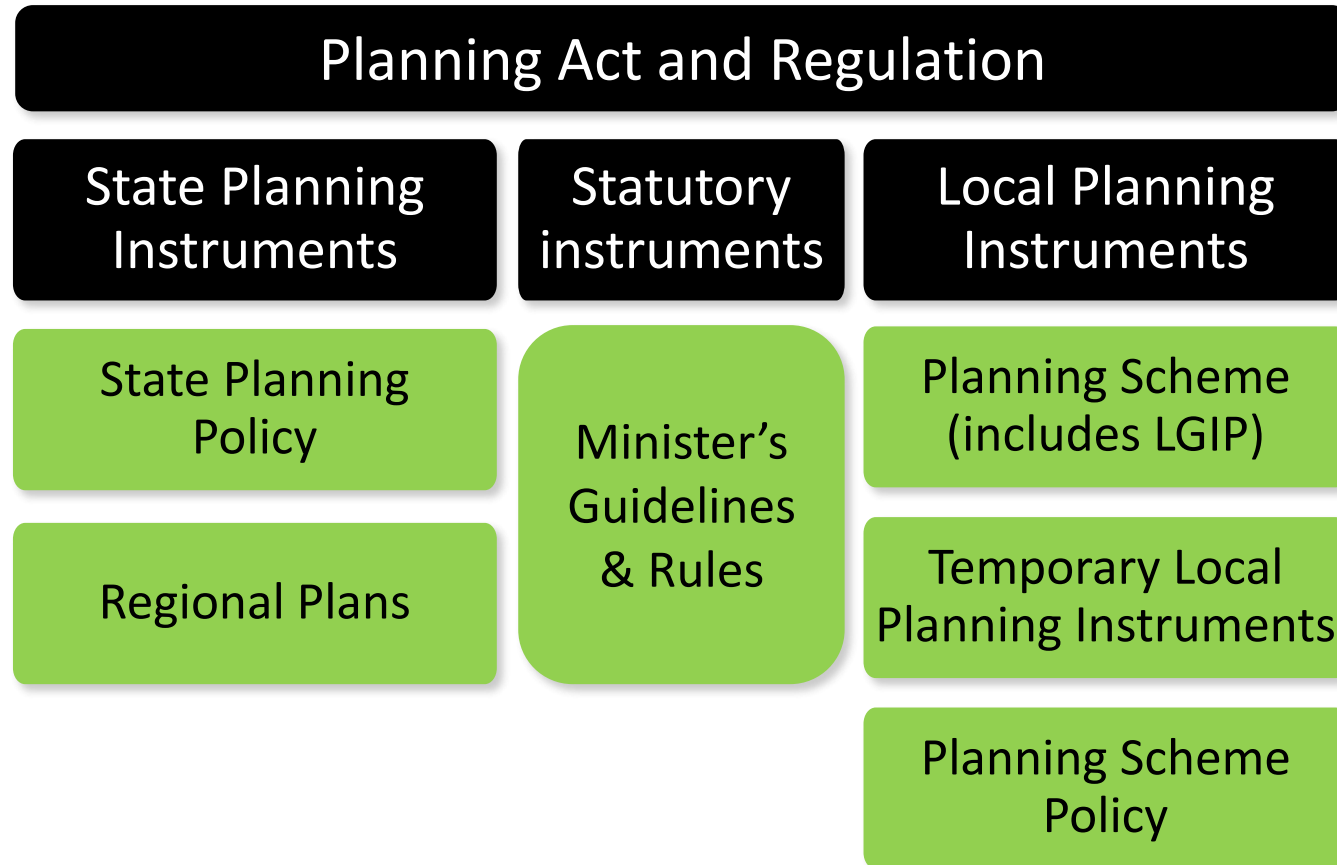


Plan-making

Making plans provides the strategic direction and land-use policies that support growth and development across the state.



Plan-making instruments



Who does what in plan-making

State	Local	Community
<p>Sets out which planning matters to be integrated in schemes.</p> <p>Set out the mandatory processes around making or changing plans.</p>	<p>Create the local planning tools, which consider state policy and local circumstances.</p>	<p>Get involved in the planning process so local plans meet their expectations.</p>



What is the same

- Roles of state and local government
- Planning Scheme remains the principal planning instrument.
- Public consultation mandatory.
- Local planning instruments retained.
- State Planning Policy retained.
- Regional Plans retained.



What's different

- State planning instruments – 4 have become 2
- SPRP content now in Regulation
- QPP mandatory requirements now in Regulation
- Process for making schemes more flexible
- More time for community to comment on a draft scheme.

What's new

- Minister's Guidelines & Rules
- Community engagement toolkit
- State will consult on any changes to the Minister's Guidelines & Rules

What it means for the community

- More time to have your say in the plan-making process
- Schemes that are simpler to read and understand
- Simplified planning instruments
- Retention of important SPRPs into the Planning Regulation 2017

The planning scheme

- Sets the land-use plan in your area.
- Principal 'instrument' that guides planning and development.
- Best opportunity to shape how local area grows and develops.



Planning schemes under the PA

- Mandatory contents in a scheme set by the state and called '**Regulated Requirements**'
- Process to make or change a scheme is set in the '**Minister's Guidelines and Rules**'
- Public consultation is mandatory.
- State created the community engagement toolkit to assist.
- The **Planning Minister** approves the scheme.

New system and planning schemes

- All schemes are valid under the new legislation
- Chapter 8 of the Planning Act provides for a smooth transition.
- Some councils have undertaken an 'alignment amendment' to update terminology (no policy changes).



Development assessment in QLD



Development assessment

- Chapter 3 of the Planning Act
- The **assessment manager** is the entity responsible for making a decision on an application.
- The **referral agency** may also assess the development application
- Type of assessment to be undertaken is usually set out in a local planning scheme

What's the same

- Planning Regulation states who the assessment manager is
- Local government is usually the assessment manager for applications lodged in the local area
- SARA is retained under the Planning Act
- Planning Minister can still 'call-in' an application and make a decision on behalf of council

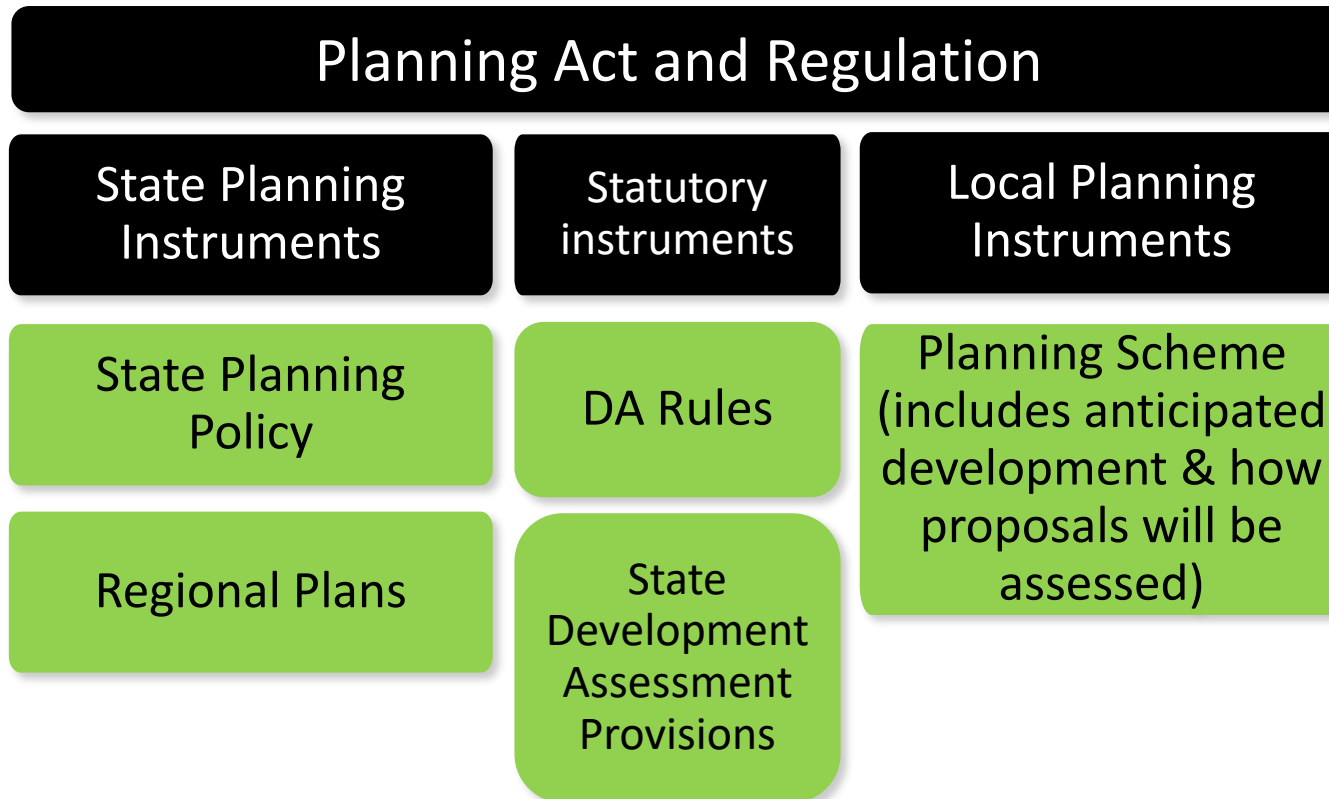
What's changed

- Categories of development (now accepted/ assessable/ prohibited)
- Decision rules for code/ impact assessment
- Development assessment process
- DA Forms reduced in number from 34 to 2

What's new

- New Instrument = DA Rules
- Ability for assessment manager to issue an exemption certificate
- Ability for assessment manager to appoint an alternative assessment manager
- All decision makers must publish their reasons for decisions (statement of reasons).

The DA framework



Who does what in DA

State	Local	Developers	Community
Sets out what is development and who are the assessment managers.	Outlines how it will assess development in the local planning scheme.	Makes the applications using the state's DA forms.	Make a submission against impact assessable development applications.
Assesses development applications where a state planning matter has been 'triggered'.	Decides on the majority of development applications lodged in their area.	Conduct public consultation on their proposals (impact assessable).	Can appeal a decision in court (if a properly made submission was made).



Categories of development

- Three categories in QLD – accepted, assessable and prohibited
- Accepted development **does not require** an application or assessment (but may be subject to criteria)
- Assessable development **does require** an application and assessment
- Prohibited development cannot be applied for.

Categories of assessment

Accepted	Assessable		Prohibited
All development other than assessable or prohibited development or identified as such in a categorising instrument	Development a categorising instrument states can only be carried out with a development approval		Development identified in a categorising instrument as prohibited
	Code	Impact (requires public notification)	

Code versus impact

Code	Impact
<ul style="list-style-type: none"> • Requires an application and assessment. • If the application meets what is set out in the scheme, then it must be approved. • No public notification is required. • Aim to capture 'expected' development. 	<ul style="list-style-type: none"> • Requires an application and assessment. • 'Any other relevant matter' • Requires public notification; where members of the public can make a 'submission'.

Code versus impact

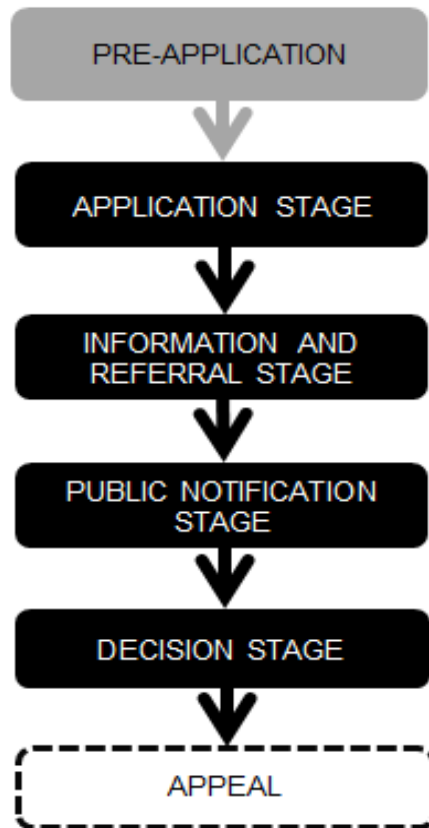


How a DA is assessed

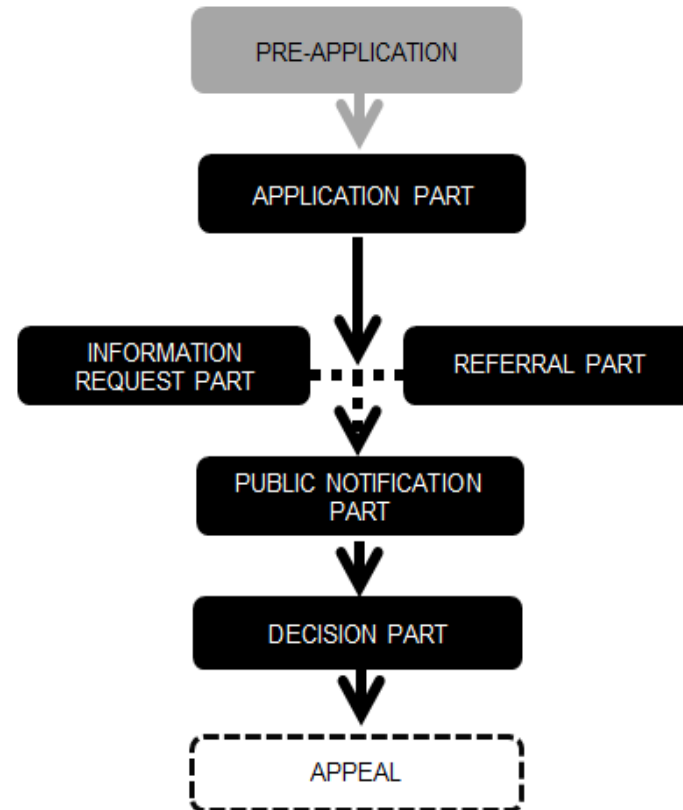
- Every development application (DA) in QLD must be assessed in the same way.
- This process is set out in an instrument called the DA Rules.
- Applicants, assessment managers and referral agencies must follow the processes and timeframes within the DA Rules.

The DA Process

IDAS



DA Rules



Statement of reasons

- New requirement for a decision makers to provide the reasons for their decision
- Must be published on website
- Must identify where approved & did not comply with benchmarks
- 'Plain English' for all to understand



What it means for community

- Ability to understand a decision through the statement of reasons.
- Greater certainty on decision outcomes due to stronger provisions around 'code assessable development'.
- Improved public notification signage to highlight impact assessable developments in your area.

Dispute resolution in QLD



Dispute resolution

- Formal avenues to resolve and manage disputes as they occur in the planning system
 - Planning and Environment Court
 - Development Tribunal
- What's changed:
 - Stand-alone Planning & Environment Court Act
 - Costs arrangements

New Qld Planning Act framework

Your rights to be involved

Revel Pointon
Solicitor
EDO (Qld) Inc.



EDO Qld.
Environmental Defenders Office

Who are EDO Qld?

Non-profit Community Legal Centre providing:

- legal advice;
- representation;
- legal education; and
- law reform

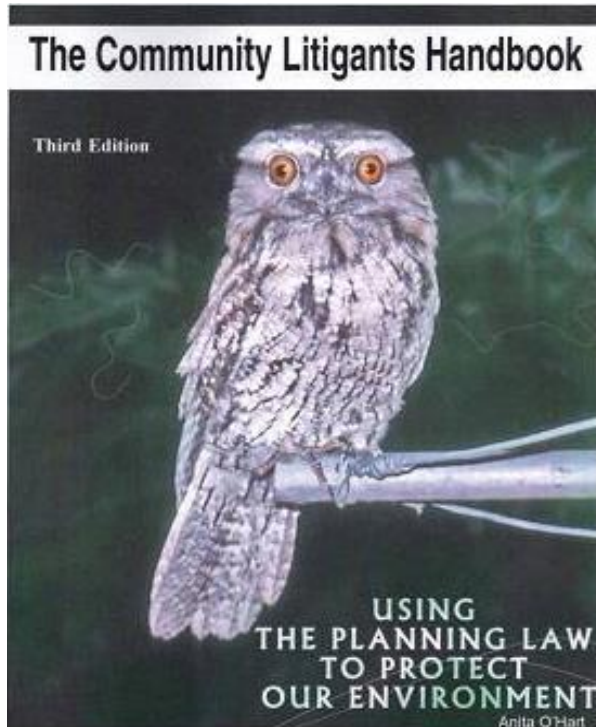


in public interest environmental law



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Key planning law rights available to you

1. Written submissions:

- a) Planning instruments – state and local
- b) Development applications - DA for impact assessment
OR variation request to change a planning scheme

2. Third party appeals

3. Third party Declaration / enforcement order powers



New instruments to be aware of

- *Planning Act 2016*
- *Planning and Environment Court Act 2016*
- *Planning Regulation 2017*
- Development Assessment Rules
- Ministers Guidelines and Rules

Case study example – Impact assessable DA

Material change of use - from residential house to boarding kennels

Public Notification (s53 PA):

- Public notification methods now in **Development Assessment Rules**
- **Must give public notice by at least —**
 - a) publishing a notice at least once in a **newspaper** circulating generally in locality; and
 - b) placing **notice on the premises** for whole of notice period; and
 - c) giving **notice to the adjoining landowners.**



Time periods for public submissions

- for an application that includes a **variation request**—
30 business days
- for **any other application**—**15 business days**

Regulation can specify longer public notification periods (>15 business days) for certain types of application (*but none specified in Regulation currently*).



Things of note: public notification (s53(3))

The assessment manager may assess and decide a DA

even if some of the requirements of the development assessment rules about the notice have not been complied with,

if the assessment manager considers any noncompliance has not—

- a) adversely affected the public's awareness of the existence and nature of the application;
- b) restricted the public's opportunity to make properly made submissions about the application.

Things of note: public notification

- Any person, *other than the applicant or a referral agency*, may make a submission about the application.
- **Submissions must be properly made to be considered AND to grant appeal rights**
- If a DA is withdrawn or lapses, and a *not substantially different* DA is submitted *within 1 year of lapse or withdrawal* – previous properly made submissions remain valid

Submissions must be *properly made*

- ☐ **signed** by each person who made the submission
- ☐ **received within the time frame** specified
- ☐ states the **name and residential or business address** of all submission-makers
- ☐ **states its grounds, and the facts and circumstances** relied on to support the grounds
- ☐ states **1 postal or electronic address for service** relating to the submission for all submission-makers
- ☐ is **made to the correct entity e.g. the assessment manager for DAs**



Good submissions will:

- Rely on facts and circumstances that focus on planning issues – eg:
 - ☐ **consistency with the intent for the area** expressed in the relevant planning instruments (e.g. planning scheme).
 - ☐ **compatibility of built form with surrounding land uses and existing streetscape.**
 - ☐ whether there is demonstrable **need** or not for the development.
 - ☐ any **potential traffic and car parking issues posed.**
 - ☐ impacts on amenity e.g. noise, air quality, sunlight, green space.
 - ☐ possible impacts on **drainage and flooding** in the surrounding area.
- Include any **relevant evidence, studies, documentation in support** of the grounds raised in the submission.



Got your properly made submission?



What happens next...?

Decision period:

- **Decision notice** will be received by those who made a properly made submission, either
 - after refusal decision; or
 - after Applicant's appeal period finishes/notification they won't appeal received.
- May receive a **Negotiated Decision Notice** – where Applicant made *change representations* during applicant's appeal period, to seek changes as to the approval or conditions (some limitations)
- Decision must include **REASONS** for decision
- No apparent requirement to refer to appeal rights in notice



Not happy with the decision?

- You may **appeal to the Planning and Environment Court** - only if you made a *properly made submission*
- **Only appeal after you have received legal advice**
- Must file and serve **Notice of Appeal** within – **20 business days from decision notice being ‘given’**
- Notice of appeal must:
 - (a) be in the approved Court form, with fee; and
 - (b) succinctly states the grounds of the appeal.
- Appeal may be referred to **ADR process**



Your rights - if developer appeals refusal or conditions

- You may become a **co-respondent** to an appeal commenced by the developer
- You will receive a Notice of Appeal from the Applicant – notifying their appeal of the decision
- To elect to co-respond, you need to:
 - lodge a Notice of Election to co-respond in the approved form,
 - within 10 business days after the notice of appeal is given to the person



Case study: Code assessable DA

- **No community rights to provide submissions or appeal decision**
- **However, you may:**
 - **Comment on a draft/amendment to a planning scheme**, which declares when development will be code assessable (or impact/accepted);
 - **Provide informal submissions** to the assessment manager; or
 - **Apply for a declaration** from the Planning and Environment Court - if you dispute the legality of a decision made or proper process *e.g. whether it should be assessed as a code assessable DA.*



Broad power to seek a Declaration

s11 Planning and Environment Court Act 2016

- **Any person** may seek a declaration in the P&E Court about, for example:
 - a) a **matter done, to be done or that should have been done** for this Act or the Planning Act; or
 - b) the **interpretation** of this Act or the Planning Act; or
 - c) the **lawfulness of land use or development** under the Planning Act.. Etc

Except for Ministers directions and call in powers



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Think development is illegal or not in accordance with condition?

s179 Planning Act 2016

- **Any person** may apply to the P&E Court for **enforcement orders** that require a person to—
 - (a) refrain from committing a development offence; and/or
 - (b) remedy the effect of a development offence.

Best to notify DILGP or Local Government first.

Get legal advice before commencing Court action



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Cost rules

s59 Planning and Environment Court Act: ...*each party to a P&E Court proceeding must bear the party's own costs for the proceeding.*

Except, there is a discretion to order costs where:

- Proceeding is commenced primarily to **delay or obstruct**;
- Proceeding is **frivolous or vexatious**;
- **There has been a default in procedural requirements etc...**

Can award costs against someone subject to an enforcement order.

To reduce any risk of an adverse costs order: seek legal advice as to grounds, ensure you meet all Court time frames, remain engaged and communicate with other parties actively.

Some wins for the community

- Longer, mandatory public notification for planning instruments
- Maintaining community submission, appeal and enforcement rights
- Removing risks of adverse costs orders brought in under previous government
- Reasons for decisions – more transparency and accountability
- Return of *potential* for longer public notification in Regulation... not used yet

NEW: Exemption Certificates

- *Remove need for a development application/ assessment*
- Can be provided where:
 - Referral agencies have agreed (where applicable); **and**
 - Any of the following apply—
 - i. the **effects of the development** would be **minor or inconsequential**, considering the circumstances under which the development was categorised as assessable development;
 - ii. the development was categorised as assessable development only because of **particular circumstances that no longer apply**; or
 - iii. the development was **categorised as assessable development because of an error**.
- Notice must be provided on website, with reasons.
- Possible to apply for a declaration that exemption certificate was not legally appropriate in the circumstances.

NEW: Chosen assessment managers

- **Code assessable development only, and not for variation requests**
- Can outsource assessment of development applications
- Local government or state government must have **list of chosen assessment managers** – must be **appropriately qualified**
- **Developer can choose** which chosen assessment manager they want to assess their development
- **Chosen assessment manager must then choose to ‘accept’** the request

NEW: Chosen assessment managers

- Local government must have apply satisfactory **Code of Conduct** to chosen assessment managers – to limit conflicts of interest
- Subject to the normal requirements e.g. to make a development application publically available, publish on website
- Can be struck off list by local government or Minister
- Any future change to the development permit will also be dealt with by the chosen assessment manager if still listed

EDO Qld Advice Line

- Free advice service for public interest environmental legal questions
- Every Tuesday evening
- Always looking for volunteers...

- **Direct enquiries to:**
edoqld@edoqld.org.au

07 3211 4466



Thanks for listening!
Any questions?



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Q&A



More information

- Call us: 3452 7009
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