IDAS IMPLEMENTATION NOTES

Note 1
Overview of IDAS

The *Integrated Planning Act 1997* (IPA), forms the foundation of Queensland's planning and development legislation. Amongst other things, the IPA establishes the step-by-step process for lodging, assessing and deciding development applications in Queensland. This process is called the 'Integrated Development Assessment System' or IDAS.

In Queensland, there are numerous Acts which, amongst other things, regulate development by setting out minimum standards aimed at managing and protecting the environment. These Acts are usually topic specific.

The IPA and IDAS framework provides these Acts with a common process to regulate development.

1.0 Approvals currently integrated into the IPA and IDAS framework

The IPA, schedule 8, prescribes those aspects of development which are assessable against State legislation. An IDAS approval is necessary for such development, and is in addition to any IDAS approval required for development that is regulated under a planning scheme. The *Integrated Planning Regulation 1998*, schedule 2, prescribes the referral agencies and their jurisdiction for various aspects of development assessable under IDAS.

The legislation and approvals integrated into the IDAS framework at the date of publication of this Implementation Note include -

- planning and subdivision;
- building work assessable against the *Building Regulation 2006*;
- environmentally relevant activities (including mobile and temporary environmentally relevant activities) under the *Environmental Protection Act 1994*;
- licensed brothels under the *Prostitution Act 1999*;
- development on strategic port land under the *Transport Infrastructure Act 1994*;
- major hazard facilities under the *Dangerous Goods Safety Management Act 2001*;
- development involving contaminated land under the *Environmental Protection Act 1994*;
- development for aquaculture under the *Fisheries Act 1994*;
- vegetation clearing under the *Vegetation Management Act 1999*;
- quarrying in a watercourse, referable dams and taking or interfering with water under the *Water Act 2000*;
- tidal work, including prescribed tidal work, or work within a coastal management district under the *Coastal Protection and Management Act 1995*;
- building or raising water barrier works under the *Fisheries Act 1994*;
- development involving removal, destruction or damage of marine plants under the *Fisheries Act 1994*;
- development on a Heritage Registered place under the *Queensland Heritage Act 1992*;

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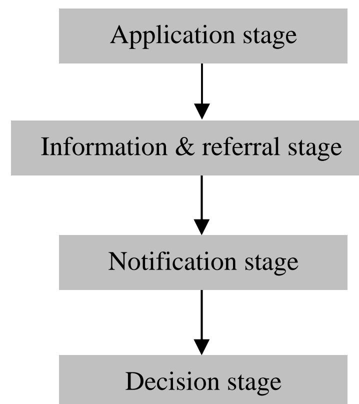
- development on land within or adjoining a declared fish habitat area under the *Fisheries Act 1994*;
- development impacting on public transport infrastructure or public passenger transport services under the *Transport Infrastructure Act 1994*;
- certain subdivisions in the SEQ Regional Plan area;
- Development involving a wild river area declared under the *Wild Rivers Act 2005*;

Further information on the types of development approvals that have been integrated into the IDAS framework and the referrals that may be triggered for an application can be found on the IPA website www.ipa.qld.gov.au under Development Assessment /IDAS Referral Agencies.

2.0 The four stages of IDAS

IDAS has a modular design so as to deal with both simple and complex applications. Not all development applications have the same input requirements or level of complexity. Consequently, not all stages of IDAS, or all steps within a stage, apply to all applications.

Figure 1: The four stages of IDAS



The **application stage** is the stage where the application is lodged by the applicant with the assessment manager (or private certifier in the case of building work assessable against the *Building Regulation 2006*) who in turn issues the acknowledgment notice (if required) confirming receipt of the application.

In the **information and referral stage** the application is referred to any relevant referral agencies and is reviewed by the assessment manager (or private certifier) and the referral agencies, who may then request the applicant to provide further and better particulars necessary for the application to be properly assessed and decided. This stage of IDAS also provides concurrence agencies with the opportunity to assess the application and provide a response to the assessment manager and applicant.

The IPA requires all impact assessable applications to be publicly notified. This notification process is prescribed in the **notification stage** of IDAS. This stage of IDAS provides the community (submitters) with the opportunity to comment on a proposal and secure appeal rights to the Planning and Environment Court about the decision to approve the application. Code assessable applications are not required to be publicly notified under IPA.

In the **decision stage**, the assessment manager makes a decision on whether the application is to be approved, approved subject to conditions, or refused and advises the applicant and any submitters for the application of this decision.

3.0 The key participants in IDAS

There can be numerous participants in the IDAS process for a particular application. Each participant has a recognised role and is given certain rights and responsibilities under the IPA.

The **applicant** is responsible for lodging the application with the assessment manager, providing copies of the application to any referral agencies, and paying any applicable application/referral agency fees.

An IDAS application is assessed and decided by the **assessment manager** (with input from any applicable referral agencies).

If the application requires assessment against the *Building Regulation 2006* only, a **private building certifier** may perform the role of the assessment manager for receiving, assessing and deciding the application. A private building certifier is a suitably qualified building professional, privately contracted by the applicant to undertake this function

Note: *If a concurrence agency directs the application to be refused, the assessment manager must refuse it.*

IDAS referral agencies are usually a State Government Department or agencies who have a formal role in assessing the application. There are two types of referral agencies: concurrence and advice. A **concurrence agency** can request further and better particulars from the applicant about the application during the information and referral stage and can direct the assessment manager's decision on the application, including the imposition of conditions on a development approval, or the refusal of the application. An **advice agency** may only provide advice to the assessment manager to assist them in assessing and deciding the application.

Any interested person, group or organisation may comment on an IDAS development application during the **notification stage**. However to be a **submitter** for an application, this comment must:

- be in writing
- state the names and addresses and be signed by each person making the comment;
- be received by the assessment manager during the notification period for an impact assessable development application;
- state the reasons why the comments are being made.

A submitter for an impact assessable development application can appeal the decision to approve the application, including any conditions of approval, to the Planning and Environment Court. Code assessable approvals are not subject to submitter appeals.

4.0 The concept of development *[s1.3.2 of the IPA]*

The IPA defines 'development' by reference to five (5) distinct actions (or aspects of development). The term is a broad concept covering a wide range of actions affecting the physical environment, including -

- carrying out building work;
- carrying out plumbing and drainage work;
- carrying out operational work;
- reconfiguring a lot; and
- making a material change of use of premises.

The concept is deliberately broad to ensure IDAS is able to integrate the many different development related assessment systems. A narrower meaning would limit the application of the system.

An important point to note about the way the tem 'development' is used in the Act that assists in its understanding, is that development is defined to be an **action** rather than the **result** of an action. For example, development is the **carrying out** of building work and the **making** of a material change of use rather than the results of those actions, which are **a building** and **a use** of premises.

Plumbing and drainage work, although defined as development under the IPA, is regulated under the *Plumbing and Drainage Act 2002*, and is not integrated into the IDAS framework.

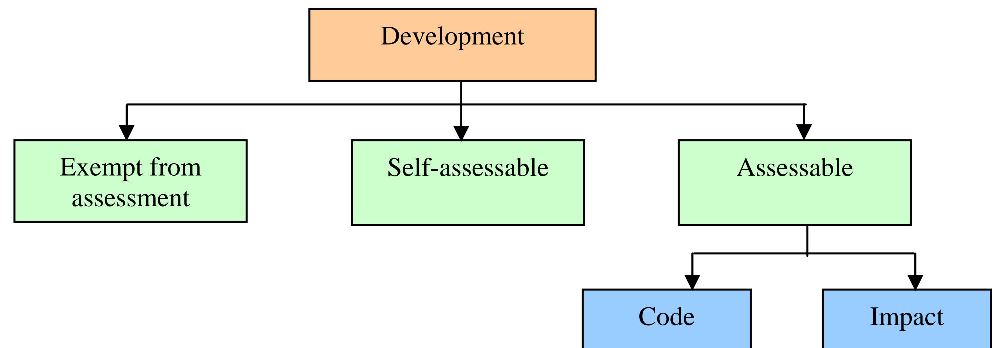
5.0 How development is made assessable and the levels of assessability

Development may be either assessable, self-assessable or exempt from assessment. The basic premise of the IPA is that all development is exempt from assessment unless it is made assessable or self-assessable either in **schedule 8** of the IPA, the **Regulatory Provisions** of the South East Queensland Regional Plan, or in a local government's **planning scheme.** This means that while many development activities are captured within the concept of 'development', not all activities are automatically regulated.

The IPA recognises the following three (3) levels of development assessability -

- ***exempt*** - an application is **<u>not</u>** required and the proposal is not required to comply with any codes or standards;
- ***self-assessable*** - an application is **<u>not</u>** required but the proposal **<u>must</u>** comply with any applicable codes or standards relevant to the development (e.g. development standards in a transitional planning scheme, codes in an IPA planning scheme, or a State code such as the Prostitution Code or Fisheries Codes); or
- ***assessable*** - an application **<u>is</u>** required and a development permit **<u>must</u>** be obtained prior to undertaking any new work or use. Assessable development may be either code or impact assessable.

<u>Figure 2: Levels of assessibility</u>



6.0 Code and impact assessment

Section 3.1.3 of the IPA states that assessable development may be subject to code assessment or impact assessment, or both code and impact assessment. Both of these terms are defined in schedule 10 of the IPA.

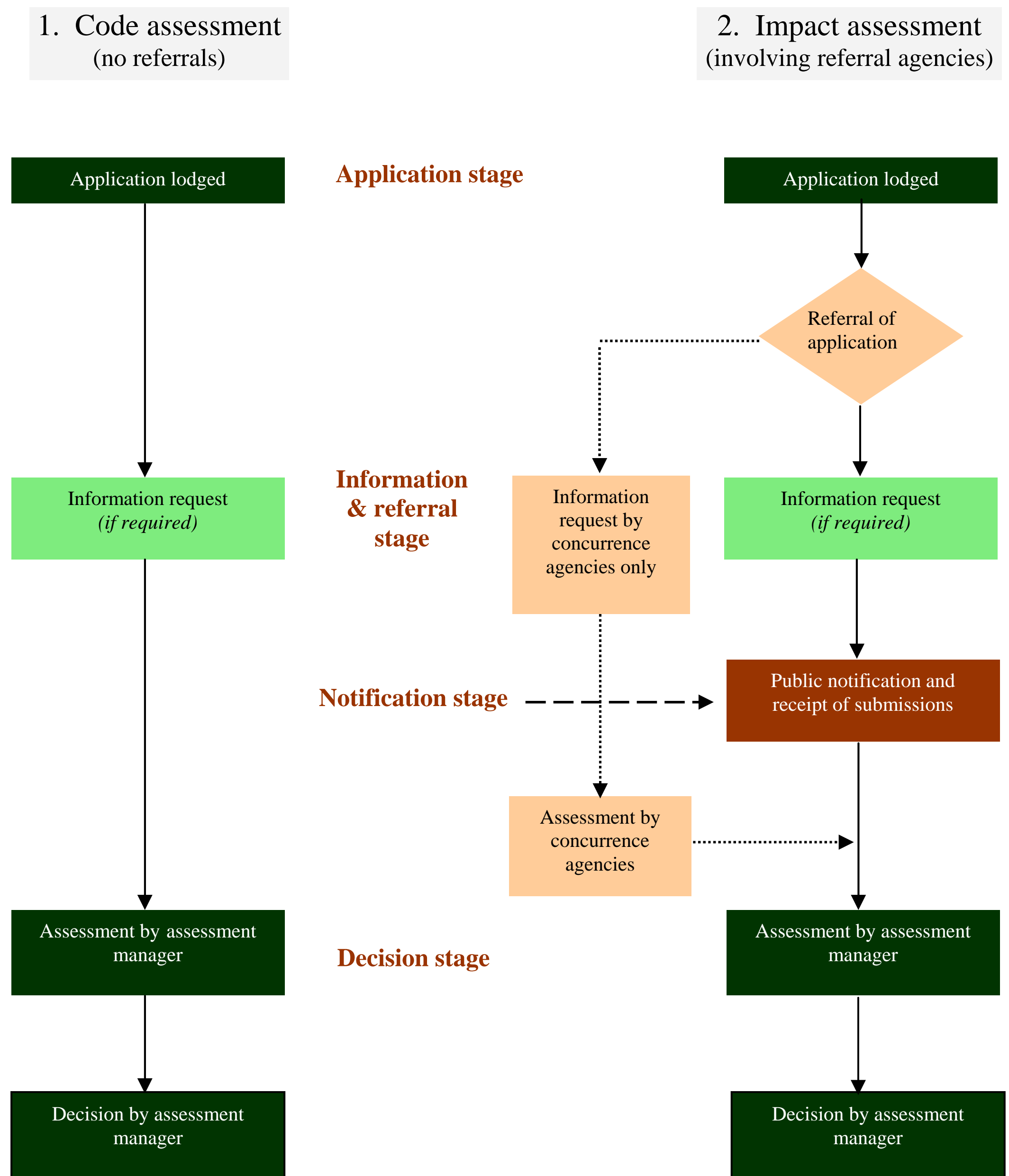
<u>Code assessment</u> is referred to as a bounded assessment, i.e. the application is assessable against identified 'applicable codes' only.

If the application complies with the code the application must be approved. However, the application may also be approved if it does not comply with the code, if there are sufficient grounds to justify the decision having regard to the purpose of the code, any applicable State Planning Policy (SPP) and if applicable, the SEQ Regional Plan and as long as the decision does not compromise the achievement of the desired environmental outcomes for the planning scheme.

<u>Impact assessment</u> is a broad assessment of the environmental effects of the development having regard to a range of matters such as the local government's planing scheme, applicable codes, the SEQ Regional Plan and any relevant SPPs.

An impact assessable application must be publicly notified, including notification of adjoining land owners and a newspaper notice, and any person or group who lodges a properly made submission about the application accrues third party appeal rights through the Planning and Environment Court about the decision to approve the application.

Figure 3: Examples of the IDAS process



Flow charts of the IDAS processes for different types of applications are available on the IPA website.

7.0 Relationship between schedule 8 of the IPA and a planning scheme

IDAS is a Statewide system established under the IPA which relies on State instruments, local government planning schemes and other local government instruments for implementation.

While local government planning schemes are integral to the operation of IDAS, they are not the only instruments that can establish a regime for assessable and self-assessable development.

Certain development is currently regulated by the State through Schedule 8 of the IPA. The building control system and the system for regulating environmentally relevant activities are some examples.

Accordingly it is important that the IPA establishes rules to ensure that any decisions made by the State under Schedule 8 about the assessability or self-assessability of development cannot be changed in a planning scheme.

Schedule 8, part 1 - identifies particular types of development that is assessable. A planning scheme cannot make development listed in this part of the schedule exempt, nor can the scheme contain development standards or codes relating to the development. Therefore assessment against the planning scheme is not required. However, the planning scheme may deal with other aspects of the same type of development if they are not listed in Schedule 8.

Similarly, the planning scheme cannot make development listed in part 1 of Schedule 8 self-assessable.

Schedule 8, part 2 - identifies development that is self-assessable development and which cannot be made assessable against a planning scheme. An application for assessment against the planning scheme is not required but the developer is required to ensure the development complies with any applicable self-assessable development standards or codes.

Schedule 9 - identifies development which the State has made exempt from assessment against any local government planning scheme e.g. operational work associated with the management practices for the conduct of certain agricultural uses. However, the material change of use for agriculture may still be made assessable or self-assessable against a planning scheme.

8.0 Deciding an application

In deciding an IDAS application, the assessment manager must consider the response of any concurrence agency applicable to the application and must:

- approve all or part of the application (with or without conditions decided by the assessment manager) and include in the approval any concurrence agency conditions; or
- refuse the application.

9.0 Types of approval

Under the *Integrated Planning Act 1997* (the IPA) there are a variety of approvals that may be sought/given in relation to a development application. They are-

- development permit;
- preliminary approval -
  (i) generally; and
  (ii) over-riding the planning scheme.

The reason there is a variety of approval types is to ensure the Integrated Development Assessment System (IDAS) operates with the flexibility needed to deal with the wide range of potential application scenarios that will be encountered.

Development permit

A development permit is only required for assessable development, although self-assessable development must comply with codes/standards applying to the development[1].

If a development proposal involves multiple aspects of assessable development (e.g. material change of use, operational work and building work) a development permit must be obtained for each of these aspects of development. The necessary development permits may be obtained through a single development application or multiple applications (e.g. one application for each aspect of assessable development).

A development permit authorises the assessable development to occur and must be obtained **prior** to the development commencing. Importantly, a development permit cannot conflict with a previous preliminary approval for the proposal that is still current.

Preliminary approval (generally)

Section 3.1.5 of the IPA establishes the concept of preliminary approvals (generally). Preliminary approvals (generally) are optional only (i.e. it is not essential prior to seeking a development permit) and do **not** authorise the development to commence. However, once issued (and if current) the preliminary approval is a binding approval and is therefore often a useful step in the development process, in particular in the staging of large and complex approvals.

[1] For more explanation of assessable, self-assessable and exempt development refer to IDAS Implementation Note 1, Part 5.0.

The IDAS process applies equally to both types of preliminary approvals. That is, the IDAS timeframe, the level of assessability, the referral triggers, public notification and referral coordination apply whether or not the preliminary approval is a general approval or an approval over-riding the planning scheme.

Like a development permit, a preliminary approval can condition development.

The assessment manager may issue a preliminary approval (generally) even if the applicant sought a development permit.

Preliminary approval (over-riding the planning scheme)
A preliminary approval (over-riding the planning scheme) is a preliminary approval to which s3.1.6 of the IPA applies.

The assessment manager cannot issue a preliminary approval (over-riding the planning scheme) unless the applicant requested it at the time of making the application.

As the name suggests, this type of approval over-rides a planning scheme on the land the subject of the approval and substitutes different provisions on that land for the life of the approval or until the development approval is completed. This is a power in addition to the powers of a preliminary approval (generally) under s3.1.5 of the IPA.

In addition to approving the development, this type of preliminary approval may -

- establish the level of assessment for further development on the site. Utilising this provision the level of assessment that would otherwise be required (eg. impact assessment) for the subsequent development may be altered (eg. to code assessment). Alternatively the development may become exempt or self-assessable, in which case a development permit would no longer be required; and/or
- identify the codes against which the subsequent development would be assessed.

10.0 Imposing conditions on a development approval

IPA provides for a development approval to be granted subject to conditions. A condition may be imposed by the assessment manager, a concurrence agency or the Minister and may stipulate requirements regarding the construction phase of the development, the commencement of the proposed use and/or the ongoing maintenance of the proposed use or works.

Conditions imposed on a development approval must be reasonably required with respect to the development or use of the premises as a consequence of the development and relevant to (but not an unreasonable imposition on) the development or use of the premises as a consequence of the development.

11.0 Who can lodge an appeal?

An **applicant** may appeal the decision of the assessment manager (including any concurrence agency requirements) by lodging an appeal with the Planning and Environment Court (the Court) during their 20-business day appeal period.

For an application involving impact assessment, any **submitters** to the application also have appeal rights and may lodge an appeal about the decision to approve the application during their 20-business day appeal period. The assessment manager will notify submitters of their appeal period and appeal rights.

An appeal is lodged with the Court except where it relates to building work assessed against the Building Regulation, in which case it is made to the Building and Development Tribunal.

12.0 When does the approval take effect?

Following the issue of a development approval, the approval takes effect

- if there are no submitters and the applicant does not appeal the decision - when the decision is given;
- if there are submitters and the applicant does not appeal the decision, the earlier date of either:
  - when the submitters' appeal period ends; or

  - the day the last submitter gives the assessment manager written notice that the submitter will not be appealing the decision;
- If an appeal is lodged – when the decision of the court or tribunal is made.

13.0 How long does an approval last?

The standard length of time an approval remains valid (the relevant period) is 4 years for a material change of use or reconfiguration (involving operational works), otherwise it is 2 years. However, an alternative length of time may be stipulated in the decision notice.

Furthermore, in the case of a development approval for a material change of use or for reconfiguring a lot, if there is a related approval[2] given for a development application made within 2 years of the original approval (or subsequent related approval), the relevant period for the material change of use or reconfiguration will restart from the date of the original approval or the last related approval.

14.0 Private building certification

An IDAS application requiring assessment against the *Building Regulation 2006* only can be lodged with and determined by a private building certifier rather than the local Council. A private building certifier cannot determine any other aspect of a development application.

A private building certifier must:

- meet minimum qualifications and experience criteria;
- be accredited to practice by the Building Services Authority (BSA); and
- have professional indemnity insurance.

Private building certifiers are also bound by a strict code of conduct aimed at protecting the public interest.

15.0 Infrastructure planning and charging

To meet the future needs of a community, the IPA requires a Council planning scheme to address the provision of infrastructure.

Once planned for, a Council can impose a levy as a condition of development approval for certain infrastructure including:

- water management (e.g. water supply, sewerage and drainage);
- transport infrastructure (e.g. toads, traffic control devices and cycle ways); and
- local community purposes (e.g. parks and land for community purposes).

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[2] For more information on the meaning of 'related approval', refer to section 3.5.21(7) of IPA