

IPA COMMUNITY INFRASTRUCTURE IMPLEMENTATION NOTE

*Note 1***Designation of Land for
Community Infrastructure****Introduction**

This implementation note has been prepared to provide guidance on the designation of land for community infrastructure under the *Integrated Planning Act 1997* (IPA), and replaces Infrastructure Implementation Note No 1 version 2.01 dated July 2000. Amendments to the IPA that commenced in October 2004 (IPLAA 2003¹) changed the way the IPA dealt with Ministerial designations, and this note also discusses these changes and the process that now applies to designation.

The section numbers referred to in this implementation note are section numbers under the IPA unless otherwise indicated.

Background to designation

When the IPA commenced in March 1998 chapter 2, part 6 established the designation process as a specific mechanism for dealing with community infrastructure. The purpose of the new mechanism was the forward identification of land for community infrastructure to facilitate the integration of land use and infrastructure planning, and the efficient and cost-effective provision of the infrastructure.

A State Minister or a local government may designate land for community infrastructure. Ministers follow the process stated in chapter 2, part 6; and local governments use the plan making process under schedule 1.

The planning scheme provides a common instrument for all providers of community infrastructure to indicate their intentions, be they State or local government or private providers. The planning scheme is particularly appropriate for this purpose due to its orientation towards desired outcomes, its role in integrating local, regional and State dimensions of the matters dealt with, its accountability and accessibility to the public, and its built-in review mechanism.

If land for community infrastructure is identified early using the designation mechanism it ensures that suitable land is available for development at the time it is needed. Designation of land also ensures that the proposed infrastructure is considered by any entity, particularly local governments, when making planning decisions or decisions on development applications in the subject area.

That is, the site can be protected from encroachment by incompatible new uses or works, and development on adjoining land can also be managed in relation to effects potentially affecting either party.

Tests to qualify for designation**Community Infrastructure under schedule 5**

There are two tests to determine whether a proposal qualifies for designation. The first is whether the proposal is defined as community infrastructure under the IPA, schedule 5. This is a comprehensive definition intended to cover all forms of facilities providing physical, social and government services necessary to support communities. Also included in the definition are any other uses incidental to and necessarily associated with the use for community infrastructure (see the definition of 'use' in IPA, schedule 10).

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¹ *Integrated Planning and Other Legislation Amendment Act 2003*

In the case of a hospital, for example, incidental uses may include a laundry, canteen and staff accommodation. These other uses may be quite significant in terms of their scale, but if they exist only to provide essential support to the primary hospital use they would be part of that use and covered by a designation for that type of community infrastructure. However, if it were intended that the laundry operate both for the benefit of the hospital and as a commercial enterprise in its own right, the designation would only include that component of the laundry related to the hospital. The significance of this point relates mainly to the application of the planning scheme. The laundry would be subject to the planning scheme if development for a laundry on the subject land were identified as self-assessable or assessable under the scheme.

This matter has implications for —

- Describing community infrastructure to be included in a designation;
- Understanding any limits on the operation of uses associated with a designated community infrastructure;
- Understanding the relationship with the relevant planning scheme if there are uses that are not incidental to and necessarily associated with the use for the community infrastructure on the same land;
- The consideration of planning scheme provisions underlying the designation that apply if the development were not covered by the designation.

Public benefit test under section 2.6.2

The second test for determining if a proposal qualifies for designation is whether the designator is satisfied the community infrastructure will perform one or more functions under section 2.6.2. These functions relate to environmental protection and ecological sustainability—the efficient allocation of resources; State or local government statutory requirements or budgetary commitments for the supply of community infrastructure; and community expectations for the efficient and timely supply of the infrastructure. The test is to ensure that designated community infrastructure is planned and justified in terms of being beneficial to the public.

For the benefit of public accountability, the consideration of the matters under section 2.6.2 should be a deliberative and documented action.

Need to designate land for community infrastructure

As the designation of land for community infrastructure facilitates the integration of land use and infrastructure planning it is appropriate to use the mechanism in relation to development for the purposes of new community infrastructure. It is also appropriate in the case of existing community infrastructure if substantial extensions are proposed, or if extensions include development that varies from the purpose or requirements of an existing designation. If the community infrastructure is existing and there is no intention to significantly extend or change the infrastructure, there is no need to designate.

In this regard it should be noted that —

- all existing uses are protected and may continue;
- an existing use includes any use incidental to and necessarily associated with the use of the premises;
- many planning schemes recognise community infrastructure as an intended use in zones, identified, for example, as ‘Community Uses’ or ‘Special Purposes’;
- for an extension or change to an existing use to be ‘development’ for the purposes of the IPA, there must be a **material** change in the intensity or scale of the use, or the extension must involve works. For the planning scheme to impose requirements or require development approval for the extension or change, the scheme must identify the works or intensification of the use as self-assessable or assessable under the scheme;
- IPA, schedule 9 provides for some aspects of development carried out by the State or an entity acting for the State to be exempt development under a planning scheme.

IPA, schedule 9 also provides for all aspects of development for community infrastructure prescribed under the *Integrated Planning Regulation 1998*, schedule 11 to be exempt development under a

planning scheme. Refer to the section on ‘Application of planning schemes and IPA schedules 8 and 9’ for further details.

Recent changes to the designation process

In October 2004 the amendments to the Ministerial designation process included within IPOLAA 2003 commenced. Schedules 6 and 7 were deleted and new sections 2.6.7 to 2.6.9 incorporated. The new provisions place greater emphasis on ensuring adequate environmental assessment and public consultation before a Minister decides to designate. Designation by a local government carried out under the IPA schedule 1 process (for making or amending a planning scheme) has not been changed.

Matters the Minister must consider before designating land

Before designating land for community infrastructure, the Minister must be satisfied, under section 2.6.7(1), that for development the subject of the proposed designation, there has been adequate environmental assessment, including adequate public consultation, and also adequate account taken of issues raised in public consultation.

Section 2.6.7(3) provides there has been adequate environmental assessment and public consultation if the assessment and consultation have been carried out as required by guidelines made by the chief executive² under section 5.9.9, or if one of five stated statutory processes has been completed. Refer to the section on ‘Adequate environmental assessment and public consultation’ below for further details.

Also before designating land the Minister must consider each relevant planning scheme and each relevant State planning policy (section 2.6.7(2)). There is also provision for the Minister to give a notice about the proposed designation to the land owner and each relevant local government if the environmental assessment and public consultation process undertaken (including those processes listed in section 2.6.7(3)) has not provided for such written notification, and give those entities at least 15 business days to make a submission (sections 2.6.7(4) and 2.6.7(5)). The Minister must then also consider each properly made submission before making a decision (section 2.6.7(2)).

Procedures after making a decision on a proposed designation

Section 2.6.8 states procedures to be followed after a decision has been made by the Minister to designate. It involves publishing a gazette notice and giving notices to each owner of the land and local government previously notified and also the chief executive. Details of the matters to be covered in the notices are also stated. An example template for the notices is provided in the guidelines made by the chief executive and discussed further in the section below.

If the Minister decides not to designate, section 2.6.9 requires that notices to that effect be given to the same entities mentioned in section 2.6.8 if the designation was proceeding.

Adequate environmental assessment and public consultation

The designation mechanism as a process performed under the IPA has always involved an obligation to advance the purpose of the IPA, being to seek to achieve ecological sustainability, including by coordinating and integrating planning at the local, regional and State levels and by managing the effects of development on the environment. However, as mentioned above, amendments to the designation provisions in the IPA have emphasised this obligation and identified specifically what may constitute adequate environmental assessment and public consultation for the purposes of designation.

Section 2.6.7(3) states there has been adequate environmental assessment and public consultation in relation to development for the community infrastructure if certain guidelines are followed or one of five statutory processes has been completed. The guidelines are those made by the chief executive under section 5.9.9 (see section on ‘Guidelines made under the IPA, section 5.9.9’ below) and the statutory processes mentioned are—

- the notification and decision stages under the IPA integrated development assessment system (IDAS);
- the environmental impact statement (EIS) process under the IPA, chapter 5, part 7A primarily for “controlled actions” under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*;

² Currently the Director-General of the Department of Local Government, Planning, Sport and Recreation

- the planning scheme making or amendment process under the IPA, schedule 1;
- the EIS process under section 35 of the *State Development and Public Works Organisation Act 1971*; and
- the EIS process under chapter 3, part 1 of the *Environmental Protection Act 1994* primarily for mining activities not regulated under the IPA.

It should also be noted that the guidelines and these statutory processes are not exclusive and the Minister may choose to be satisfied that adequate environmental assessment and public consultation for the development have been undertaken in some other way. However, for the sake of accountability of the decision-making process, public consultation and the consideration of environmental effects should be deliberative and documented.

Guidelines made under the IPA, section 5.9.9

*Guidelines about Environmental Assessment and Public Consultation Procedures for Designating Land for Community Infrastructure*³, made in October 2004 under section 5.9.9 (amended in December 2006), were made to coincide with the commencement of the new section 2.6.7(3) referring to those guidelines. Section 5.9.9 requires the chief executive to consult about the making of the guidelines using the process for a planning scheme policy, involving notification in a newspaper and a period of 20 business days for making a submission.

The guidelines provide for a consistent procedure to be followed by providers of proposed community infrastructure in order to satisfy the designating Minister that the environmental assessment and public consultation undertaken for the proposed development has been adequate.

The guidelines set out a six-step process involving two stages of consultation. The first stage involves the preparation of an initial assessment report and consultation with relevant local governments, public sector entities, land owners and interest groups. The guidelines give guidance on identifying relevant parties to consult and include a checklist at schedule 2 for identifying matters relevant for assessment. After taking account of the submissions received, the initial report is finalised for public notification purposes.

The second consultation stage involves public notification, a consultation period of at least 15 business days, and availability of a revised assessment report. After taking account of the submissions received and any further input from those previously consulted, a final assessment report is prepared for the Minister's consideration before the Minister decides on the proposed designation.

The guidelines acknowledge that the extent of assessment in a particular case depends on the nature and scale of the community infrastructure proposed. The number and nature of parties consulted will also vary depending on the circumstances of a particular proposal. In using the guidelines it needs to be established that the determination of relevant matters for assessment and relevant parties to consult has been deliberate and the procedures described in the guidelines have been followed.

The guidelines also provide for the chief executive to recognise an alternative environmental assessment and consultation process that may be followed in place of the standard procedures in the guidelines. Any alternative processes are identified in schedule 1 of the guidelines. The Powerlink Manual has been recognised as an alternative process for environmental assessment and public consultation for Powerlink's electricity transmission infrastructure and is included at schedule 5 of the guidelines. The guidelines were amended in December 2006 to include a new schedule 6 – Electricity Distributor's Manual, which provides an alternative process for ENERGEX and Ergon Energy to follow in making designations.

Any changes to the guidelines, including the addition or modification of recognised alternative processes, requires public consultation using the same process as for the making of the guideline.

Designation requirements under section 2.6.4 to deal with environmental effects

Designations may include requirements about works or the use of the land for the community infrastructure, such as the height, shape, bulk or location of the works on the land, vehicular and pedestrian access to and on the land, hours of operation, landscaping, and ancillary uses, designed to lessen the impact of the works or the use of the land.

³ ⁴ Guidelines about Environmental Assessment and Public Consultation Procedures for Designating Land for Community Infrastructure Version 1.1 December 2006' are available on the IPA website www.ipa.qld.gov.au

Requirements that may be relevant to a particular designation will vary depending on a number of factors including the nature of the community infrastructure, the nature of existing and potential surrounding land uses, features of the natural environment, and the extent to which planning for the community infrastructure had progressed at the time of designation. Plans showing details of buildings, car parks and access points, etc may be attached to the designation along with any other necessary written requirements to lessen adverse environmental effects.

In the case of site allocation for community infrastructure occurring well in advance of construction, any requirements on the designation would be less specific in nature. However, likely effects of future development on the subject site can still be considered and broad parameters established (e.g. maximum floor area for a community centre or maximum number of beds for a hospital), and if relevant, constraints or performance criteria imposed in relation to matters such as building height, access points and boundary setbacks.

Application of planning schemes and IPA schedules 8 and 9

An effect of designation is that development under a designation is exempt development under the planning scheme (section 2.6.5). Accordingly, development does not require an approval under the planning scheme, nor need to meet any scheme requirements.

However, the provisions of the IPA, schedule 8 (State assessment requirements in relation to assessable and self-assessable development) continue to apply (e.g. in relation to carrying out building work or making a material change of use for an environmentally relevant activity). Also, any State or Commonwealth approvals required outside IDAS, must also be obtained before proceeding with development.

The planning scheme continues to apply to proposed development that is not consistent with the designation or that is not incidental to and necessarily associated with the community infrastructure. Development approval is required for such development if it is assessable under the planning scheme, or if self-assessable applicable codes in the planning scheme must be complied with. The underlying provisions of the planning scheme relating to designated land remain.

IPA, schedule 9 makes all aspects of development for community infrastructure prescribed under a regulation exempt from assessment under a planning scheme. This development is listed in schedule 11 of the *Integrated Planning Regulation 1998* and includes all aspects of development in certain circumstances for—

- State-controlled roads;
- other transport infrastructure; and
- electricity infrastructure.

Noting of designations on planning schemes

Local governments are required under sections 2.6.11 and 2.6.17 to note designations on their planning schemes. The *IPA Guideline 1/99: Preparing IPA Planning Schemes* provides further details about the noting of designations on planning schemes.⁴

In summary, the guideline recommends spatial representation of the designation (such as an outline of the border of the designated land) on a scheme map or overlay, together with written details of the designation, including any requirements placed on the designation under section 2.6.4 (see discussion above) located on the map or overlay within the border of the designated land, or if space does not permit, referenced to a footnote on the map or overlay or elsewhere in the scheme, or to other plans or documents that may form part of the designation. Repealed designations must also be noted on the planning scheme.

Ownership of land and timing of designation

If the designator, or the beneficiary of the designation, is not the owner of the land to be designated, the IPA provides for the interests of the land owner to be protected through—

- A 6 year life for a designation (unless reconfirmed in writing by the Minister) if the land has not already been purchased or taken (or in the process of being taken) under the *Acquisition of Land Act 1967*; (sections 2.6.14, 2.6.15) and

⁴ *IPA Guideline 1/99: Preparing IPA Planning Schemes* is available from the IPA website: www.ipa.qld.gov.au.

- The right for an owner of an interest in designated land to request that the designator buy the interest. (section 2.6.19)

Having regard to when the community infrastructure is proposed to be provided, these provisions have implications for when designation should be undertaken.

Community Infrastructure Designation Database

The Department has created a database to record details of Ministerial designations, including repeals and amendments. The database may be accessed from the IPA website at www.ipa.qld.gov.au and searched by time period, designating Minister, type of community infrastructure, local government area, location and parcel description.

Preliminary questions before the commencement of the designation process

- Is the proposal a 'community infrastructure' within the meaning of schedule 5 of the IPA?
- Will the community infrastructure perform one of the functions specified in section 2.6.2, i.e. does it pass the 'public benefit' test?
- Does the proposal incorporate uses that are not incidental to and necessarily associated with the community infrastructure?
- Will the environmental assessment and public consultation for the proposed community infrastructure—
 - follow the requirements of the *Guidelines about Environmental Assessment and Public Consultation Procedures for Designating Land for Community Infrastructure*, or
 - be covered by one of the statutory processes stated in section 2.6.7(3), or
 - follow another process that would satisfy the Minister as being adequate?
- Having regard to the life of a designation and provisions to protect the interests of land owners, what is the appropriate timing of the designation if the designator, or beneficiary of the designation, is not the land owner?

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