

IDAS IMPLEMENTATION NOTES

Note 3

Development application under a Superseded planning scheme

A superseded planning scheme (herein referred to as an SPS) is a planning scheme or planning scheme policy that has been amended after 30 March 1998 (i.e. after the commencement of IPA) -

- in its entirety (i.e. a whole new scheme or policy) and was in force immediately before the current scheme or policy under which the application is being made;

OR

- in part (i.e. a provision/development standard). Every amendment to a part of a scheme or policy creates a new SPS. Therefore within a single 2 year period there may be numerous SPS's which apply to a single local government area.

The term SPS may therefore apply to -

- an entire planning scheme
- part of a planning scheme, e.g. infrastructure provisions
- a related planning scheme policy
- a planning scheme or policy as amended.

1.0 Why IPA provides for a development application (SPS)

Development applications (SPS) are linked to IPA's compensation requirements and allow a proponent to demonstrate a genuine intent to develop/redevelop their land/premises within 2 years of the commencement of a new planning scheme, planning scheme policy or planning scheme/policy amendment.

To trigger the compensation requirements of IPA, a proponent must make an application (SPS). A local government as assessment manager may opt to assess the development application (SPS) under the superseded planning scheme/policy, meaning the owner is "compensated" by being allowed to exercise development rights not permitted under the current scheme/policy. Alternatively, the local government may opt to assess the application under the current scheme, in which case the owner would be entitled to claim compensation based on the difference in the value of development rights approved under the current scheme and those available under the superseded planning scheme.

2.0 What is a development application (SPS)?

A "development application (SPS)" is defined in the IPA, schedule 10 and means –

A development application that—

- is seeking assessment under a SPS or notifying of an intention to carry out development under a SPS; and
- is made only to a local government as assessment manager; and
- is made within two years after the day the planning scheme, planning scheme policy or amendment creating the SPS took effect¹.

Note: SPS may apply to a transitional planning scheme or an IPA planning scheme.

To contact us:
PO Box 15031 City East
QLD 4002
(07) 3237 1279
www.ipa.qld.gov.au

¹ The timeframe under the IPA in which a development application (SPS) can be made was changed on 30 March 2006. Prior to this date an application (SPS) was required to be made within 2 years of the date of the adoption of the planning scheme, planning scheme policy or amendment.

3.0 The two (2) types of development applications

There are two (2) circumstances in which an applicant may choose to make a development application (SPS) -

1. where an application would have been required under the SPS and the applicant is asking the assessment manager to assess the application as if it were lodged under the SPS

OR

2. where a proposal would have involved either or both “exempt development” or “self-assessable development” under the SPS and an application would not have been required but has been made “assessable development” requiring an application under the current planning scheme. In this instance the application consists of the applicant advising the assessment manager that they intend to carry out the development under the SPS without the requirement to obtain a development permit.

4.0 Where a proposal involves development assessable under the SPS

When a development application (SPS) is made the applicant must complete Form 1 Development Application, Part A, the IDAS Assessment Checklist and any other applicable Parts, and Attachment 1. These forms are available from the IPA website at www.ipa.qld.gov.au.

Question 1, option (i) of the Attachment should be ticked.

Question 2 of the Attachment asks the applicant to identify the SPS (i.e. the SPS in effect on a nominated day) and the relevant provision/s under which assessment is sought.

In this instance the assessment manager is required to give the applicant an acknowledgment notice. The timeframe in which to give the notice is **30 business days** (rather than 10) after receiving the properly made application.(s.3.2.3 IPA)

The acknowledgment notice must state that either -

- the application will be assessed under the SPS; or
- the application will be assessed under the existing planning scheme and a development permit will be required under the existing planning scheme².

5.0 Where a proposal involves development exempt or self-assessable under the SPS

In this instance the applicant advises the assessment manager that the applicant proposes to carry out development under the SPS, using Form 1 Development Application, Part A only, and Form 1 Attachment. Question 1, option (ii) of the Attachment should be ticked. Question 2 asks the applicant to identify the SPS and the relevant provision/s.

In this instance the assessment manager is required to give the applicant an acknowledgment notice. The timeframe in which to give the notice is **30 business days** (rather than 10 business days) after receiving the properly made application.

The acknowledgment notice must state -

- the applicant may not proceed as if the development were to be carried out under the SPS and a development permit will be required for the proposal. In this instance a new application is required to be lodged for assessment against the existing planning scheme.

OR

- the applicant may proceed as if the development were to be carried out under the SPS, and a development approval is not required. In this instance, the applicant may start the development at any time within **4 years** after the acknowledgment notice is given if it is a material change of use, or otherwise within **2 years**.

² If the application assessed against the existing planning scheme is refused or approved in part and/or subject to conditions (by either the assessment manager or on appeal), the applicant is entitled to lodge a claim for compensation for reduced value of interest in land (with exceptions s 5.4.4) within 6 months of the decision.

6.0 Assessment against the SPS

If the assessment manager has indicated in the acknowledgment notice that the application will be assessed under the SPS, the application must be assessed and decided as if the SPS applied to it and not the current planning scheme in force (i.e. section 3.5.5(2)(b) of IPA does not apply).

7.0 Relevant period for applications assessed against the SPS

The relevant period for an approval starts the day the approval takes effect and ends, for -

- **making a material change of use**, whichever is the longest of (s.3.5.21 IPA)-
 - 4 years; or
 - the time stated or implied in the approval.

Note: If a related approval is given within 2 years of the start of the relevant period, the relevant period for the material change of use restarts from the date of the related approval.

- **reconfiguring a lot requiring operational works**, either -
 - 4 years; or
 - the time stated or implied in the approval;

Note: If a related approval is given within 2 years of the start of the relevant period, the relevant period for the material change of use restarts from the date of the related approval.

- **reconfiguring a lot not requiring operational works**, either -
 - 2 years; or
 - the time stated or implied in the approval;

- Note: If a related approval is given within 2 years of the start of the relevant period, the relevant period for the material change of use restarts from the date of the related approval.
- **all other development**, whichever is the longest of -
 - 2 years; or
 - the time stated or implied in the approval.

If a request is made to extend the relevant period for an approval for a development assessed under the SPS, the decision on that request cannot be appealed.

8.0 When compensation may be payable

An owner of an interest in land may be entitled to be paid reasonable compensation by the local government if—

- an application (SPS) has been made; and
- the local government has advised the applicant that the application will be assessed against the existing planning scheme; and
- the local government (or the Court, if the local government's decision is appealed) refuses the application or approves the application in part and/or subject to conditions.

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