IDAS IMPLEMENTATION NOTES

Note 39

Compliance Assessment

From 4 October 2004, the *Integrated Planning Act 1997* (IPA) was amended by providing a new process for compliance assessment (conditions requiring compliance) *[s3.5.31A of the IPA]*. This section establishes a simple compliance checking mechanism for documents or works required under certain conditions of development approvals.

The new process provides a simpler alternative to the formal Integrated Development Assessment System (IDAS) assessment processes for certain development.

Matters requiring compliance assessment are prescribed under Schedule 12 of the *Integrated Planning Regulation 1998* (IP Reg). Currently, the regulation triggers compliance assessment for conditions about operational works (including but not limited to landscaping, car parking, vehicle crossings, site drainage and acoustic treatments) that are a natural and ordinary consequence of development under material change of use (MCU) approvals.

1.0 When should compliance assessment be used?

Compliance assessment must be used for assessing any documents, plans, or completed works required for operational works under a condition of a MCU approval given by a local government as assessment manager. However -

- to trigger compliance assessment, a condition in the relevant MCU approval must require assessment of documents, plans or works against a code or standard **identified in the relevant planning scheme**. This is to ensure the requirements are publicly available and able to be predicted by applicants when preparing requests for compliance assessment.

2.0 Requesting compliance assessment

A request for compliance assessment is made to the entity that imposed the condition requiring compliance assessment. In the case of operational works for an MCU, this will almost always be the relevant local government, in particular because the code or standard against which the document, plan or work will be assessed **must** be identified under the relevant planning scheme. (For completeness, the regulation indicates such a condition may be imposed by a concurrence agency, however given the nature of the development, and the requirement for a relevant code or standard to be identified under a planning scheme, this would be unlikely).

The regulation also provides an option for a condition to require -

- compliance assessment be undertaken by a ‘suitably qualified’ entity engaged by or on behalf of the applicant; and
- for the suitably qualified entity’s response to be given to the entity that imposed the condition.

Example: *The condition may require compliance assessment for landscaping work to be undertaken by a suitably qualified landscape architect. A copy of the landscape architect’s assessment would then be given to the local government as the entity that imposed the condition.*

Generally, the request for compliance assessment can be made at any time before the development approval including the condition requiring compliance assessment lapses. (To determine when a development approval will lapse, refer to s3.5.21 of the IPA and IDAS Implementation Note 17 available from www.ipa.qld.gov.au).

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

However, if the condition requiring compliance assessment states or implies another time for submitting the request, then the stated or implied time will prevail.

3.0 Charging a fee for compliance assessment

The regulation enables the entity requiring compliance assessment to charge a fee for carrying out the assessment. There are several important matters to consider in establishing fees -

- the fee must be proportionate to the work involved in assessing the document or work;
- before the compliance assessment arrangements commenced, such assessments were required either under conditions of development approvals, or as IDAS assessments in their own right. The IPA does not provide for fees for administering conditions of approval, so in order to recover costs for such assessments, assessment managers should have factored these costs into the fee for the original MCU application. Consequently, in establishing fees for compliance assessment under the new arrangements, it is recommended assessment managers also review fees for related MCU applications to reflect the separate fee arrangements for compliance assessment;
- often, assessment of plans or works under conditions is an iterative process, requiring documents or works to be modified before compliance is achieved. For example, this is why the regulation establishes a time limit for the entity carrying out compliance assessment to "respond", rather than to "approve" the document or work. In this context, the fee referred to under the regulation is intended to reflect the entire assessment process, and not simply the initial request. It would be inappropriate to treat a request for assessment that is unable to be concluded in the initial response period as finalised and thus treating any revised document or work as a new request for assessment triggering a new assessment fee.

Consequently it is expected that the introduction of compliance assessment arrangements should have a neutral effect on the overall level of fees charged to assess a particular project.

4.0 The time period for assessing a request for compliance assessment

By a local government

Schedule 12, item 6 of the IP Reg establishes a **15 business day** response period time for local governments assessing a request for compliance assessment.

It is not the intention of the legislation that all compliance assessment requests be decided within 15 business days. However, it should be remembered that the purpose of compliance assessment is that it be a more efficient alternative to code assessment.

It is important to note that this is a **response** time and not an **approval** time. While compliance requests should be assessed as quickly and efficiently as possible, the regulation recognises that such assessments are sometimes iterative processes, and should not be interpreted to imply 15 business days is the maximum time available to deal finally with a request.

Consequently, a "response" may be in the form of a request for further information or an amended plan if there is insufficient information to determine compliance, or if an aspect of the document or work does not comply with the stated code or standard.

Example: *if a condition for landscaping works requires a plan to be approved using the compliance assessment process and the plan is assessed as being deficient is some way, the expectation is that the local government will respond within the 15 business day period by asking for an amended plan that addresses the identified deficiencies. Once the amended plan is submitted, the 15 business day response period restarts for the local government.*

When a person requests compliance assessment it is intended the response period applies as many times as necessary to achieve compliance for that request. It is not intended that the person make new requests for assessment. This is because the compliance assessment process is designed to ensure works are carried out in accordance with the requirements of a nominated condition on the overarching MCU approval. If the condition requires works to be carried out to comply with a stated standard, then the law requires the condition be satisfied.

By a suitably qualified entity

If a request for compliance assessment is made to a suitably qualified entity, the time period that entity has to respond to the request is at the discretion of the applicant and the entity to agree on. Once again, the response may take the form of a request for additional information or an amended plan if there is insufficient information to assess compliance.

5.0 Consequence of the assessing entity not responding in time

By a local government

If a local government does not respond to a request for compliance assessment during the 15 business day response period, the plan, document or works to be assessed for compliance with the code or standard are **taken to be in compliance** with the condition of approval, i.e. are deemed to comply. Again, this does not imply that the assessment must be finalised within 15 business days, only that a response must be given within this time.

By a suitably qualified entity

Provided a copy of the suitably qualified entity's response is given to the local government that imposed the original condition requiring compliance assessment, the document or works are taken to comply with the condition of approval. Failure of the suitably qualified entity to provide a response within the time period agreed to by the applicant and the suitably qualified entity does not result in a deemed compliance.

6.0 Appeal rights

A person submitting plans for compliance assessment has the right to appeal to the Planning and Environment Court (the Court) if they are dissatisfied with a response they receive from the assessing entity. This opportunity is included to ensure disagreements or difficulties can be resolved by an independent party. Previously, disputes over such compliance matters were difficult to resolve, because often the appeal period for the approval under which assessment of works was required had already expired.

If making an appeal, the appeal documentation must be lodged at the Court registry within **20 business days** after the day the entity gave its response. Applicants are unable to appeal to the Court against the outcome of any compliance assessment undertaken by an entity they have engaged in the capacity of a 'suitably qualified entity'.

The "Notice of Appeal" form (PEC-02) can be accessed free via the IPA website.

A nominal fee is charged to lodge an appeal in the Court. The fee may change each financial year and only covers the initial cost a lodging the appeal. Additional costs are associated with ongoing appeal procedures.

7.0 Frequently asked questions

Is compliance assessment compulsory?

If a condition of a development approval requires assessment of plans or works in the circumstances triggered under the IP Reg (that is, for operational works that are the "natural and ordinary consequence" of a MCU), then the compliance assessment process must be used. However there are several alternatives to achieving compliance, apart from conditioning.

Some planning schemes already trigger IDAS assessment for the types of work triggered under the IP Reg. If this is the case, then **compliance assessment of such work should not also be required as a condition of a development approval.** Section 3.5.15(2)(h) of the Act requires a development approval to identify other development permits necessary for the development to be carried out. This should not be by way of conditions, but by way of a simple statement indicating the approvals required.

It is strongly recommended local governments, in developing their IPA planning schemes, evaluate the need for separate IDAS approvals for operational works listed under the IP Reg given the availability of compliance assessment. Compliance assessment provides a simpler and more flexible alternative to IDAS assessment for such works, and should be used in preference to making the works assessable development in its own right.

Another option for the regulation of such works is to make them self-assessable. This is particularly appropriate for low impact works such as landscaping or vehicle cross-overs.

What sort of operational work is the "natural and ordinary consequence" of a material change of use?

Compliance assessment can only be required for operational work that is the natural and ordinary consequence of a material change of use. Such operational works might include, but are not limited

to, car parking design, landscaping works, vehicle cross overs, site drainage details and acoustic treatment.

How might a typical compliance assessment condition be phrased?

Section 3.5.31A of the Act states a "condition may require a document or work to be assessed for compliance with a condition". This implies compliance assessment involves two types of conditions – one establishing the work required and the standard to which development for the work is to be carried out, and the other establishing the requirement for compliance assessment for that work to ensure that the stated standard is met.

Example: *For landscaping works, a condition may require the premises to be landscaped in accordance with an identified landscaping code or standard under the planning scheme. A second condition may require a landscaping plan demonstrating compliance with the previous condition to be submitted for compliance assessment under section 3.5.31A of the Act.*

Compliance assessment can also be required for either or both a document and the completed work.

Example: *In the above example, a further condition could require the applicant to request compliance assessment of the completed landscaping within a stated time after the work is complete.*

Conditions for which compliance assessment is triggered are still required to meet all of the relevant tests in the Act for a lawful condition, in particular the requirements for conditions to be "relevant or reasonable".

Why is there an option for a request for compliance assessment to be given to a "suitably qualified entity", and when should this option be used?

This option has been included in the regulation to allow local governments to seek compliance assessment by a suitably qualified "third party" as an alternative to the local government carrying out the assessment itself.

There is no compulsion for local governments to use this approach, however if it is used, the regulation requires that the local government must effectively accept the response of the third party carrying out the assessment. There would be little benefit in adopting this approach if the assessment was subsequently to be repeated by the local government.

This approach may be worthy of consideration by local governments experiencing significant development pressures, where the volume of resulting assessments may create difficulties in meeting the response timeframes under the regulation. A key consideration in adopting this approach is whether the codes or standards against which assessment will take place are sufficient to give clear consistent guidance to a third party carrying out the assessment.

To allow local governments to have confidence in the outcome of a third party assessment, the regulation allows the relevant condition to establish the skills, experience or qualifications of the person to undertake the "third party" assessment through the relevant condition of the development approval. However care should be exercised that the choice does not offend principles of fairness and competitive neutrality. For example, it would be inappropriate for the local government to nominate a particular person to carry out an assessment. Instead, the condition should nominate any person with a particular set of qualifications (such as a qualified or registered landscape architect or engineer).

Disclaimer

This publication has been compiled for your information. While DLGPSR believes this information will be of assistance to you, it is provided on the basis that you are responsible for making your own assessment of the topics discussed. DLGPSR expressly disclaims all liability (including but not limited to liability for negligence) for errors or omissions of any kind whatsoever or for any loss (including direct and indirect losses), damage or other consequence which may arise from your reliance on the material contained in this publication. This information is issued on the understanding that DLGPSR is not, through the issue of this information, giving any legal or other professional service. Readers are encouraged to seek independent advice if they have any concerns about the material contained in this publication.

Queensland Government
Department of Local Government, Planning, Sport and Recreation