

# **Bureaucracy and Mediocrity – Development Assessment Under IPA**

by  
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## **Abstract**

This paper identifies a crisis in Queensland planning. The physical outcomes arising from the development assessment system are delivering mediocrity, at the expense of excellence and innovation. The carrots and sticks in the toolkit are not producing the desired results. This paper explains the phenomenon, analyses why it is occurring and presents some potential solutions.

## **Introduction**

This paper considers the performance of the current development approvals system in Queensland, in terms of the quality of outcomes being achieved. It identifies that the physical outcomes arising from the development assessment system are delivering mediocrity, at the expense of excellence and innovation. It examines the context and implications of that performance. It does so by drawing on my own observations, experience and consultation. It also draws upon research gathered from current and past planning system reviews.

This paper does not seek to propose a final solution to the problems identified. Rather, it seeks to clarify the significance of the problem and to pose some possible solutions, with a view to encouraging others to carry out a more detailed investigation. Such investigation would require significant resources involving detailed research and consultation throughout the State.

The consequences of a failing development assessment system are significant, with implications upon ecological sustainability, social equity and economic competitiveness.

## **The Crisis**

There is a crisis in Queensland planning.

Having practiced planning in Queensland under the *Local Government Act 1936*, the *Local Government (Planning and Environment) Act 1990* and the *Integrated Planning Act 1997 (IPA)*, I am firmly of the view that the development approvals system today is at its most complex, costly and time consuming.

The outcomes being achieved through the development assessment system are mediocre at best – caused by the combination of two principal factors:

1. the quality and organisational culture of local government development assessment; and
2. the structure and complexity of the planning system.

At the core of the problem has been a cultural shift to ‘check box’ planning, where fewer applicants having the patience, funds or tenacity to strive for excellence. Of serious concern is the real prospect of the situation worsening over time.

A brief summary of the phenomenon follows:

1. it begins with the *Integrated Planning Act* 1990 ('IPA'), whereby the function of the planning scheme is established;
2. fuelled by State agency interpretation (Department of Local Government and Planning - 'DLGP'), IPA planning schemes are prepared to pre-empt as much development change as possible and to codify the outcomes sought;
3. the result is a huge planning document, containing prescribed 'one size fits all' solutions;
4. in practice, these documents operate under a complex and integrated process (IDAS with its various roll-ins);
5. the hefty documentation and complex processes combine to make local government development assessment overly administrative;
6. for this and other reasons, local government has difficulty recruiting and retaining experienced development assessment planners;
7. in this context, local government development assessment planners operate in an environment dominated by 'check box' planning, in order to administer the process – this environment stifles innovation and excellence;
8. consequently, applicants increasingly adhere to acceptable solutions in planning schemes, as it is far more difficult to achieve a merit based assessment (giving rise to potential delays, refusals, appeals and cost overruns). Accordingly, they don't have the patience, funds or tenacity to strive for innovation or excellence.

'Check box' planning involves an overwhelming focus on bureaucratic procedures and the preparation of reports that check a box for compliance - which local government officers then 'tick and flick' as an assessment. This is a manifestation of the folly that all planning considerations can be codified in advance, requiring only the payment of an application fee for the 'automatic planning scheme' to assess the development proposal and issue a receipt with the decision. This has been the utopian ideal held by many, including DLGP, about the power of the planning scheme to 'automatically' determine complex issues, but it is dangerous and nonsense.

A significant contributor to the crisis, is the quality and efficiency of local government development assessment. Whilst discussed in more detail below, it seems reasonably clear that the ability of local government planners, particularly young planners, to make a rational and reasoned judgment about a complex planning issue are diminishing.

It is not all bad news. 'Performance Based' planning, entailing identification of 'acceptable solutions' in IPA planning schemes are well suited to preventing poor outcomes. They do this by specifying, generically across the planning area, the generally acceptable form of development. Largely, this has been successful and represents an improvement upon past practice. However, whilst better than poor, most 'acceptable solutions' are mediocre, in order to be broadly applicable across different contexts.

The following two sections address the two principal factors influencing these outcomes:

1. the assessment manager; and
2. the planning system.

### **The Assessment Manager**

The 2001 Census identifies the following:

- there are 5,400 urban and regional planners in Australia (1,700 in 1996);
- there are 1,026 urban and regional planners in Queensland;

- 47% of all planners are employed in local government; and
- there has been a 13-19% planner vacancy rate over last 3 years

The Planning Institute of Australia published a Consultation Draft of a *'National Inquiry Into Planning Education and Employment'* in February 2004. This document confirms there exists a critical shortage of planners in Australia, particularly in local government, where there generally exists a lack of experienced planners and serious morale issues:

*"As the piles of applications mount, developers and the State Government complain about delays, communities become ever more demanding and anxious, experienced staff resign and Councillors are tempted to shy away from 'hard' decisions. Alternatively, there may be attempts to reduce the backlog by taking shortcuts, perhaps resulting in some poor outcomes. Either way, this can become a vicious downward spiral with all concerned losing confidence that the system can deliver good results."* (submission to the Inquiry from Southern Sydney Organisation of Councils).

*"Difficult employment conditions, particularly for local government planners, are having a detrimental effect on the contribution and influence of planners and the ability to attract high calibre applicants to the planning profession."* (submission to the Inquiry by Mirvac, NSW).

*"My experience suggests a nasty 'destructive spiral' caused by new planning schemes being made unnecessarily complex, containing too much padding and basically over regulating development unnecessarily. This over regulation then captures a much wider range of applications in the net requiring the highest level of public consultation and development assessment. This in turn increases workloads on DA teams and Planning Committees, creates demand for much more red tape and paper work, increases costs for everyone and leads to delays. All of this then upsets applicants who then take out their frustration on Council staff, elected representatives and Council Mayors, leads to complaints to Planning Ministers, and so on goes the spiral."* (submission to the Inquiry from a senior planner).

In 2003 the Local Government Association of Queensland carried out a survey of local government planners which reached similar conclusions. There was a general consensus that it was difficult to attract experienced planners, and that new legislation has created more complex processes and a greater need to keep up with training.

Furthermore, it seems the trend is not restricted to Australia, with similar problems having been documented in New Zealand, Ireland and the UK:

*"Planners used to be seen as visionary figures who were helping shape society for the better. but planning has come to be seen as a bureaucratic, regulatory activity. The public stereotypes planners as box-tickers whose aim in life is to get in the way ..."* (*Changing the Culture*)

*"At worst the planning system is perceived as a petty bureaucratic obstacle that has to be got around by people who want to get on with a project. At best planning and planners are perceived as some kind of benign environmental police force safeguarding the environment, but essentially existing to maintain the status-quo."* (*Changing the Culture*)

My particular concern about these issues, are the implications upon the quality of physical outcomes. The same concern has been expressed in *The Weekend Australian* newspaper in 2003:

*"Some council planners burn out and drop out. Others step sideways into private consultancy or various public authorities. Still others are snapped up by development companies trying to negotiate the planning maze. How to encourage planners back into the maze, that's the question."*

*“In 2001, almost half of Victoria’s local council planners had fewer than two years’ experience.”*

*“...many [planners] can only take it so long...”*

*‘...morale is a big one...’*

*‘...what planners are expected to do appears to be both too prosaic and too demanding...’*

*‘...is doing DA work sexy?’*

*“Councils struggle to meet deadlines for deciding whether or not to approve development. They fall behind in revision of their basic planning documents. Inferior planning and bad decisions are more likely.”*

The reasons for these circumstances will vary from place to place. However, the following factors would appear to be the principal reasons for the local government planner and skills shortage in Queensland:

1. high volumes of work (caused by any number of the factors below);
2. political pressure from Councillors;
3. demands from the community (particularly arising from increased consultation);
4. demands from the development industry (often as a result of delays in process);
5. staff shortages (planning vacancies remaining unfilled);
6. complex legislation (increased workload arising from the complexity of the statutory processes under IDAS);
7. new legislation (need to learn new systems and laws; ability to keep up to date with provisions);
8. new IPA planning schemes (increased workload navigating the structure of the planning schemes with multiple comprehensive codes);
9. lack of funding for development assessment by local government administrations;
10. lack of training for planners to keep up to date (due to funding or availability of staff time);
11. more informed communities; and
12. increased development pressure (caused by high growth, particularly in cities)

### **The Planning Scheme**

In Queensland there appears to be a trend to increasingly lengthy and complex planning scheme documents. The reasons for this trend are numerous, but might include:

- (i) IPA removed the ability for planning schemes to ‘prohibit’ development. Whilst the ‘prohibition’ of development was a myth in law, it had real impact upon community perceptions of a planning scheme. Consequently, local government has sought to include significant detail in planning schemes to ensure that inappropriate development can be refused with justification.
- (ii) IPA restricts the scope of code assessment to the applicable codes only, excluding broader assessment against strategic components of the planning scheme, broader concepts of planning or even (bizarrely) the objects of the Act itself. This places local government in a dilemma. Unless they make all development impact assessable (which they are reluctant to do), they need comprehensive codes documenting all relevant considerations in order to

'defend' themselves against all possible development scenarios. This matter is even more complicated by DLGP having promoted code assessment as the highest order of assessment.

- (iii) IPA has been perceived as having been drafted on the premise that a planning scheme ought to have a theoretical structure that distills all relevant State, regional and local strategic planning considerations into a comprehensive development assessment component (the 'automatic planning scheme') - such that strategic issues are incorporated into the development assessment (code) provisions of the scheme. In practice this is impossible. But, it has caused many overly complex and lengthy scheme provisions, striving to achieve this planning nirvana.
- (iv) Local government has responded generally to increased community concern for improved environmental outcomes. This has logically required greater complexity in planning policy and performance requirements.
- (v) Local government has sought to achieve self-assessable development to encourage compliant development and to free resources (less applications). However, these intentions have backfired to a degree, buried under the complexity of the framework to achieve the objective. That is, the additional code compliance complexity to raise the level of assessment for self-assessable development to code-assessment has also added to the length of schemes significantly.
- (vi) DLGP has been criticised for their influence in the plan making process. Their influence has undoubtedly made planning schemes more complex, but a certain degree of complexity would have been required to address IPA in any event.

It is noted that IPA does not otherwise require or necessitate a particular format (or length) for a planning scheme.

Regardless of what issues have influenced the IPA schemes to be complex, the implications upon the approval system is profound. Under IPA schemes for larger local authorities, the level of detail for a development application has become onerous.

For example, planning reports are far more detailed to respond to the codes. I recall an example at the change over to the Brisbane City Plan 2000 where a development proposal had a report prepared which was 26 pages long under the old Town Plan. For contractual reasons the DA was delayed so the report was rewritten against the new City Plan and the report became 58 pages. A more recent example from our Gold Coast office saw a report enlarge from 19 pages to 106 pages, to address all of the relevant codes. In both cases, the complexity of these reports did not appear to influence the process or outcome.

Consequently, the costs for applicants has risen. The time for decisions has risen, commensurate with the complexity of the system.

### **The Legislation**

How much of these problems can be attributed to the legislation? Perhaps part of the answer lies back in 1990 when a Discussion Paper was released by the Queensland Department of Housing and Local Government for the review of the development approvals system, titled "*Is it too Complex?*". It is useful to revisit the deficiencies identified in our planning system then and the objectives which paved the foundation for our system today:

*'Some of the deficiencies in the existing system which have been identified include:*

- the existing approval systems are multi-layered and complex in operation;*
- there are several approval systems operating concurrently, each with its own procedures and rules;*
- the roles of the respective levels of government are not defined;*
- appeal rights are frequently difficult and costly to exercise;*
- the system is inflexible and does not accommodate new and innovative ideas;*
- there is unnecessary delay in giving decisions;*
- often decisions are made without full understanding or consideration of all the issues involved.'* (s1.2; pg3).

*'The objectives that have been established for the review are ...:*

- to produce a simplified and accessible system for the approval of land and building development including development over the sea bed;*
- to ensure that any approval system is able to effectively take into account the social, economic and environmental concerns of the community in dealing with development applications;*
- to improve the efficiency of the development approval process; and*
- to ensure that all levels and sectors of government have access to the system in a manner which allows their legitimate concerns to be taken into account but which does not create unnecessary complexity, cost or delay in the process of dealing with development.'* (my emphasis; s6.4; pg 39).

It is sobering to review these deficiencies and objectives after 13 years, as to varying degrees, planners today will still find them applicable.

The current development approvals system remains unreasonably complex, costly and lengthy. In terms of the objectives for review in 1990 it is neither simple nor efficient. In particular, it is remarkably complex in terms of determining whether a development application is required and what type.

The 'one stop shop' approvals system under IPA is complex. It is influenced by provisions within IPA, by the regulations to IPA as well as by external legislation affecting activities such as prostitution, vegetation management and environmental pollution. The complexity is compounded by the format for each rolled-in approval.

Another significant complexity for practitioners of IPA is the number of times it has been changed, or has proposed to have been changed, together with the timing of each component of those changes. At the end of the latest reprint of IPA there are no less than 35 different pieces of legislation referred to that amend IPA since 1997.

## **Potential Solutions**

Having established that the legislative complexity of IPA, as managed by local government, has the potential to negatively affect planning outcomes and to stifle innovation and excellence, it is appropriate to scope some of the ways the problem may be addressed.

The solutions scoped below require detailed analysis, as part of a broader review of the issues:

### *1. Development Assessment Review Panels*

In order to facilitate a move away from ‘check box’ planning toward merit assessment, the use of independent advisory panels should be considered. The PIA Inquiry recommends a similar process and the South Australian *Development Act* is being amended to provide for them. For example, they might work in a Queensland local authority as follows:

- the Development Assessment Panel (DAP) comprises say 6 representatives, drawn from within Council and externally;
- the DAP should include a maximum of 2 Councillors;
- the DAP should include 1 local community representative;
- the DAP is advisory only, it has no authority to make a decision;
- the DAP findings and recommendations are minuted and published for public access;
- the DAP operates under strict probity rules, governing conflicts of interest;
- only certain types of applications go before the DAP, for which an additional fee is charged;
- at the request of the applicant, any application accompanied by the relevant fee can be asked to go before the DAP; and
- the DAP should meet ‘in camera’, with observers or presentations by invitation only.

## 2. Councillor Training

This is also a recommendation of the PIA Inquiry. The recommendation is to require new Councillors who will be involved in development assessment to undergo a training course, to clarify their role and function.

## 3. Re-introducing the ‘Plan’ into ‘Planning’

The format and function of ‘codes’ should be reviewed to enable a more strategic focus for code assessable development assessment. This includes embedding strategic planning concepts into codes, without ‘acceptable solutions’ being prescribed.

It also might involve including new assessment categories into planning schemes, for example:

- code assessable development that requires public notification (but offers no appeal right); and
- impact assessable development that does not require public notification (enabling a broader assessment to be made of such development without invoking appeal rights).

## 4. Greater Use of Mediation or Alternative/Assisted Dispute Resolution Methods

A number of NSW local governments have introduced mechanisms to offer independent review or facilitation of outcomes for development assessment, as part of the development application process. One key outcome is a reduction in Court hearings. It is also no doubt useful to improve the quality of outcomes, as smaller group discussions are a useful environment to facilitate innovation. The money effectively ‘saved’ by such mechanisms can assist funding.

## 5. Changes to Internal Local Government Management Procedures, to Better Foster Innovation and Excellence

Mechanisms need to be put in place to alter the culture of local government organisations. These mechanisms need to be focussed on the promotion of excellence and innovation. Changes might relate to working conditions, employment conditions and management structures.

6 *Modifying the appeals system in Queensland to include a written method of appeal (no hearing), in addition to the current procedures*

This suggestion would provide a more timely and direct ‘check’ on local government decision making. It would be far cheaper for applicants and appellants and could be funded in a variety of ways. For example, it could be funded by the payment of a fee per appeal, or by a general levy on development applications throughout the State. It has been in place in the UK for many years, where appeals are decided by Planning Inspectors, not lawyers. Matters of legal interpretation could remain the function of the Court. Appellants could choose which method they preferred, either Court hearings or the written method.

7. *Local government planners should defend their own reports in court.*

Whilst this strategy is unlikely to minimise the stress of local government assessment officers, it would have direct implications upon the quality of decisions. In my view, it is unacceptable for local government officers to prepare reports comprising professional judgement, without the prospect of having to defend those views before the Court.

8. *Significantly increased funding (initially for additional and more experienced staff) and training for local government development assessment*

Local government does not provide enough funding to development assessment. They cannot attract adequate skilled staff. They cannot employ enough staff. They do not fund sufficient training for their staff.

There is strong consensus on this issue within the development and consultancy industries. It is not the fault of the individual officers. It is a funding and management problem that has very significant consequences when combined with the complexities of IPA.

9. *DLGP to redefine its focus to the facilitation of forward planning, with less of a focus on regulation.*

The Queensland government needs to reinvent its role in the planning system, to as to invigorate debate and develop high level expertise in:

- policy development;
- urban, rural and regional research;
- planning guidance;
- cross-agency and inter-governmental facilitation;
- dissemination of best-practice examples and innovative solutions;
- assisting local government with management strategies to implement their planning functions; and
- preparation of model standards and regulatory provisions.

For example, it is remarkable that there are multiple local governments in this State concurrently devising similar policies to address similar issues. It is inefficient and places an unreasonable burden on local government. It is also confusing for the community to address fundamentally different planning and development regimes across each local government boundary.

DLGP in particular needs to place at least equal effort on these issues, than it does on regulatory review.

## **Conclusions**

This paper has identified that development assessment is in crisis. Local government planners are under-skilled, inexperienced and under-resourced to cope with the duties they are charged to fulfil. It is largely a management problem and not the fault of the individual officers.

In Queensland, this working environment is coupled with a relatively new, complex and changing legislative environment. This has resulted in new, complex and changing IPA planning schemes.

This unhappy marriage occurs in a State with a high rate of development and growth, but with limited population and resources.

The consequence is that outcomes are increasingly mediocre. Of serious concern is that the processes that create this phenomenon are systemic and becoming part of the planning 'culture' of Queensland. It appears the phenomenon is becoming more wide-spread.

The further consequence is a general lack of innovation or excellence. This is not appropriate for the 'smart' State or the 'lucky' Country. We ought to be striving for improvement in our environmental quality and not just the status quo.

This paper has suggested some strategies to address, at least in part, these problems. In the main they relate to management and legislative reform. Other strategies will be available.

It is strongly recommended the issues raised by this paper form the subject of a major review by the State government. It could be undertaken in collaboration with the Local Government Association of Queensland. The strategies scoped in this paper should be evaluated and others explored. Significantly, these challenges could be identified and addressed more readily if DLGP took more of a proactive, leadership role in planning in this State, rather than its current reactive, regulatory role.

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Steve had initial involvement in Queensland planning reform in 1992, having prepared discussion papers for DHLGP on zoning mechanisms, development processes, compensation and plan making processes. In 1997 Steve was part of the RAPI reference group for IPA and in 2001 Steve prepared the document 'Guidelines for Private Certification' for the Building Codes unit of DCILGP.