

Integrated Planning Act – Is it Too Complex?

by

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Abstract

This paper evaluates the performance of the Queensland planning system under the *Integrated Planning Act* from a practitioner's viewpoint, particularly with respect to the development approvals system. It is necessarily a broad view and not intended to be exhaustive. The intent is to investigate the cause and effects of the good and bad elements of our planning system. The paper concludes that the current planning system is unreasonably complex, costly and lengthy.

1. Introduction

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.

In 1990 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.

This paper considers the performance of the current development approvals system, in terms of the underlying causes and effects. Each section below represents separate, but ultimately related, observations from a practitioner's viewpoint.

2. Important Influences

This paper focuses on IPA, which presents fundamental constraints and detailed complexities for efficient planning practice. In addition, there are other important influences on the development approval system today. To varying degrees, each plays a role in the issues addressed in this paper:

- (a) the State government has provided too little support for the role of DLGP;
- (b) government departments with legislation not integrated with IPA have resisted integration;
- (c) officers of DLGP have often promoted ideologies that purport to be based upon, but are unrelated to, IPA; and
- (d) local government has on one hand appropriately been responding to community pressures to improve environmental outcomes, but has also overreacted to the challenges posed by IPA.

3. Is it Development?

Perhaps the greatest complexity posed by IPA is the most critical component of the development approvals system: the definition of ‘*development*’. This is a fundamentally poor component of IPA.

It seems that our system tried to borrow from the UK ‘change of use’ and ‘development’ concepts, but for parochial reasons has failed. IPA presents only part of the mechanics which construct development rights. It was decided that each local government should have the authority to construct the missing mechanisms. The result is a system incredibly complex, uncertain and unresolved. In contrast, the UK has a stand-alone (though simple) nation-wide ‘*Use Classes Order*’ and ‘*General Development Order*’. Whilst each has been subject to significant court interpretation, at least those findings are applicable across the nation. In Queensland, we have a system potentially 125 times more complex.

By categorising ‘development’ into five types, it obliges local government to identify a level of assessment for each. Therefore, the type of ‘development’ usually has significant implications, such as whether a DA is required, additional costs, time delays, third party appeals and so on. For example, are earthworks for a drainage system in foundations for future buildings ‘operational work’, ‘plumbing and drainage work’, ‘building work’ or ‘material change of use’?

As there remains uncertainty about how the system works, it is very difficult to be confident on the appropriate planning scheme format to respond. Unfortunately, this hasn’t stopped the confidence of DLGP to influence the drafting and format of planning schemes. Perhaps some of the energies of DLGP might have been better spent on fundamental mechanical dilemmas, such as defining a core list of standard definitions for Queensland or preparing model code templates.

In essence, there is unacceptable uncertainty in determining ‘development’ and its component types – IPA has made it too complex.

4. Is it Assessable?

Once the type of ‘development’ is determined, it is then necessary to determine the level of assessment. In this respect, flexibility causes complexity, arising from:

- (a) the IPA intent to provide local government with flexibility to have the highest level of autonomy over levels of assessment; and
- (b) the IPA intent to provide flexibility for a ‘one stop shop’ approvals hub, across very different government agencies and administrative structures.

The balance is not right – the flexibility sought by IPA has made the system too complex.

For any particular ‘development’, the applicant must be aware of three sources of assessable development triggers:

- (a) Schedule 8 of IPA, which provides rare clarity, providing the applicant knows of its existence;
- (b) various external legislative provisions (outside IPA) which are increasingly influencing the level of assessment for certain ‘development’. These are even more obscure for applicants than Schedule 8 of IPA; and
- (c) the local government planning scheme. If it is a transitional scheme, determining the level of assessment is strangely straight forward. If it is an IPA scheme, the level of assessment typically could be triggered from various provisions across various chapters/volumes of the planning scheme. Further, the triggers themselves often require interpretation (eg. where levels of assessment are determined by compliance with codes).

5. Building Certification

The complexity of determining ‘*development*’ and its level of assessment must be tackled by private building certifiers in Queensland. They are required to understand and interpret these matters, in order to determine whether they are able to carry out their duties, which are limited to the assessment of only ‘building work’ against only the *Standard Building Regulation*. This is a very onerous obligation – IPA has made it too complex.

6. Onerous Procedures

The recent IPA planning schemes are very lengthy and complex documents. Why is this so? Below is a discussion of the key influences:

- (a) IPA
 - (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 - such that strategic issues are somehow magically incorporated into the development assessment (code) provisions of the scheme. Of course, this is impossible in practice. But, it has been the cause of overly complex and lengthy scheme provisions, which have bravely strived to achieve this planning nirvana.

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

(b) Local Government

- (i) Local government has a role in each of the IPA items above.
- (ii) Local government has also responded generally to increased community concern for improved environmental outcomes. This has logically required greater complexity in planning policy and performance requirements.
- (iii) 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.

(c) DLGP

- (i) DLGP has a role in each of the IPA items above.
- (ii) DLGP has been strongly criticised for their influence in the plan making process. Their influence has undoubtedly made planning schemes significantly more complex, but a certain degree of complexity would have been required to address IPA in any event.

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, for various reasons. The time for decisions has risen, commensurate with the complexity of the system.

7. 'Check Box' Planning

A very significant consequence of the size of planning schemes has become the cultural shift to 'check box' planning. This has arisen because of:

- (a) the increased workload under the new IPA planning schemes;
- (b) the structure of the planning schemes with multiple comprehensive codes; and
- (c) the complexity of the statutory processes under IDAS, including referrals.

It 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 further manifestation of the folly that all planning considerations can be codified in advance, requiring only the payment of an application fee for the IPA 'sausage machine' to automatically assess the development proposal and issue a receipt with the decision.

Unfortunately, the ability of planners, particularly young planners, to make a rational and reasoned judgment about a complex planning issue are diminishing. It is a circular problem, as these planners will increasingly rely upon the 'automatic' planning scheme to determine complex issues. Of course, this has been the utopian ideal held by many, including DLGP, about the power of the planning scheme, but it is dangerous and nonsense. And it all started with the complexity of IPA.

8. The Loss of Design Excellence

A very significant consequence of 'check box' planning is the increased adherence, by applicants, to acceptable solutions in planning schemes. This is because it has generally become far more difficult to step outside the acceptable solutions to seek a merit based assessment (refer 'check box' culture discussed above). Accordingly, applicants increasingly instruct their designers to slavishly comply with acceptable solutions, to avoid delays in assessment, refusals, appeals and the consequential cost overruns.

The consequence is mediocrity.

The acceptable solutions in a planning scheme are designed to prevent poor outcomes, generically across the planning area, by specifying the generally acceptable form of development. This rarely facilitates excellence, where a site specific solution and 'that something special' can combine to create excellence.

Check box planning does not favor non-complying applications. Again, this is a cultural shift affecting our urban environments now. And it too started with the complexity of IPA.

9. Lack of Strategic Planning

A further implication of the above consequences, is the lack of strategic planning focus in plan making since the introduction of IPA. The reason is simple enough to understand. Very significant resources have been required to draft planning scheme provisions to manage the development approval system under IPA, in particular:

- (a) the mechanisms to identify which development is assessable and the level of assessment; and
- (b) the content of codes.

It is not just local government with a primary focus on the mechanics. The State government appears content to suppress DLGP in a policy vacuum, with only a hand full of State Planning Policies. Further, the State government continues to inadequately fund the implementation of regional planning.

10. Lack of Resources and Training

This issue is in part related, in part unrelated, to the topic. Nevertheless, it is critical to the issues. Local government does not provide enough funding to development assessment. They cannot attract adequate skilled staff. They cannot employ enough staff. They do not train their staff sufficiently.

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.

11. Referral Triggers and SPP's

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. It is complicated further by the very odd referral coordination procedures, which invite 'third party' referrals in addition to 'advice' and 'concurrence' agencies.

The system is so complex that applicants can no longer rely upon a local government's Acknowledgement Notice, regarding which referral agencies apply. They are often incorrect.

Given the initial euphoria for IPA was the integration of multiple State government approval procedures, it is illustrative of the complexity of the system that so few have been integrated after 5 years.

12. Keeping Track of the Changes

A 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.

13. Benefits

There are benefits to the development approvals system which have arisen from IPA. I have not focused on them in this paper as they are not remarkable. At least, they are far less remarkable than the failings of the current system. Some benefits include:

- (a) faster processing of minor applications that suit 'automatic' decisions – for example, a development that is assessed against one code only;
- (b) common application forms across Queensland – this was a successful project and proved the benefits that can flow from DLGP focusing on a detailed issue of common interest to all local governments in Queensland; and
- (c) preliminary approvals have proved a successful mechanism, albeit with some technical constraints.

14. Conclusion

The current development approvals system is 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.

Requirements on applicants and local government are becoming more onerous. Costs are high and delays common. Significantly, the outcomes are increasingly mediocre with fewer applicants having the patience, funds or tenacity to strive for excellence. The current complexity of IPA planning schemes and administrative structures within local government suggest a worsening of the situation over time.

The principal catalyst for this situation is IPA itself. But other influences, including local and state government, have also played significant roles in terms of how IPA has been implemented. Without these influences, the development approval system might be more simple and efficient.

Some immediate targets for improvement might include:

- (a) significantly increased funding (initially for additional and more experienced staff) for local government development assessment;
- (b) DLGP to redefine its focus to the facilitation of forward planning, with less of a focus on scheme drafting;
- (c) IPA review to urgently focus on simplifying or clarifying the definitions of 'development';
- (d) DLGP to take a more lead agency role in integrating into IPA approval mechanisms across all relevant legislation; and
- (e) the format and function of 'codes' should be reviewed to enable a more strategic focus for code assessable development assessment.