

# A snapshot of the *Planning Act 2016*

July 2016



# Better Planning for Queensland

## Planning Act 2016

The Queensland Government is committed to delivering a better planning system that enables responsible development and delivers prosperity, sustainability and liveability for now and into the future.

On 25 May 2016, the *Planning Act 2016* was assented to after being passed by the Legislative Assembly earlier that month. The new legislation captures key reforms outlined in the Better Planning for Queensland Directions Paper – Next Steps for Planning Reform; which was released by the Queensland Government in May 2015.

Along with the *Planning and Environment Court Act 2016* and the *Planning (Consequential) and Other Legislation Amendment Act 2016*, the *Planning Act 2016* will replace the current legislation – the *Sustainable Planning Act 2009* (SPA).

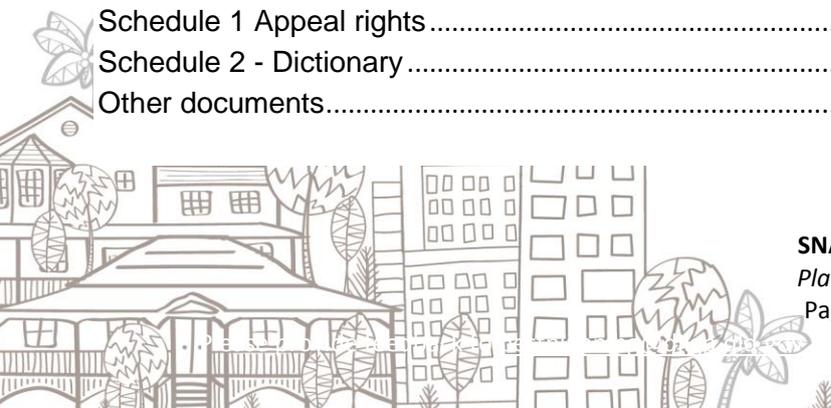
The Directions Paper provided Queenslanders with the key areas in which the government would focus its efforts, including:

1. enabling better strategic outcomes and high quality development outcomes
2. ensuring effective public participation and engagement in the planning framework
3. creating an open, transparent and accountable planning system that delivers investment and community confidence
4. creating legislation that has a practical structure and clearly expresses how land use planning and development assessment will be done in Queensland
5. supporting local governments to adapt and adopt the changes.

This booklet provides a brief description of the chapters of the *Planning Act 2016* and is intended to guide you through the new legislation.

## Contents

Finding your way around the <i>Planning Act 2016</i> .....	3
What is in the Act? .....	5
Chapter 1 - Preliminary .....	5
Chapter 2 - Planning.....	5
Chapter 3 - Development assessment .....	8
Chapter 4 - Infrastructure.....	11
Chapter 5 - Offences and enforcement .....	12
Chapter 6 - Dispute resolution .....	13
Chapter 7 – Miscellaneous .....	14
Chapter 8 - Repeal, savings and transitional provisions.....	15
Schedule 1 Appeal rights.....	15
Schedule 2 - Dictionary.....	15
Other documents.....	15



# Better Planning for Queensland

*Planning Act 2016*

## Finding your way around the *Planning Act 2016*

The new legislation is designed to be easy to navigate and follow, which has been achieved by:

- rearranging provisions so that similar matters are grouped together, are expressed more succinctly, and ordered logically
- consolidating definitions as much as possible, so they are easier to find
- removing descriptive detail about plan making, like key concepts and core matters for planning schemes
- shifting process details to other instruments, like the regulation or other statutory instruments.

Chapter	
1	Preliminary
2	Planning
3	Development assessment
4	Infrastructure
5	Offences and enforcement
6	Dispute resolution
7	Miscellaneous
8	Transitional Provisions and Repeal
<b>Schedule 1</b>	Appeals
<b>Schedule 2</b>	Dictionary



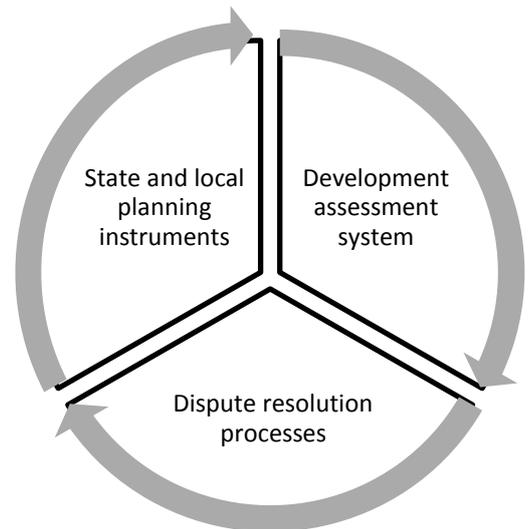
# Better Planning for Queensland

## Planning Act 2016

### The basic system remains the same

While key elements and the structure are renewed and regenerated, the *Planning Act 2016* remains similar to the current Act in many ways and will be familiar to many users.

- There are still state planning instruments and local planning instruments; and local instruments still need to reflect state interests. The Planning Minister still approves these instruments and, for local instruments, continues to set the rules for the process that must be undertaken by local governments to make or amend their planning schemes.
- There is still a development assessment system, which is an integrated system that has its scope and the powers to perform functions that are needed by the various players, still set in the legislation. However, the process details are found in the development assessment rules, which is a separate statutory instrument. The State Assessment and Referral Agency (SARA) will continue to be the assessment manager or referral agency for development applications where the state has a jurisdiction.
- There are still dispute resolution processes including the Planning and Environment Court (which is set up in its own Act – the *Planning and Environment Court Act 2016*) and a system for low cost speedy dispute resolution in the Development Tribunal (currently named the Building and Development Dispute Resolution Committee).
- There is still a hierarchy of regulatory instruments with the pre-eminent legislation establishing the system, roles and responsibilities; the regulation under the *Planning Act 2016* setting regulatory matters; and then statutory instruments, like the rules for certain processes, which are required to be created by the legislation and are empowered by the Planning Regulation.



# Better Planning for Queensland

*Planning Act 2016*

## What is in the *Planning Act 2016*?

You will find much more succinct and logically ordered legislation that, while largely familiar, will be much easier to understand and use. It also captures a series of important differences that will reset the framework and create a better system.

### Chapter 1 – Preliminary

The short opening chapter identifies:

- the new planning legislation commencing on a date fixed by proclamation – this enables a period of time between passage and implementation for education, training and system adjustments
- the purpose – ecological sustainability sits as the key and overarching intent of the legislation and the system qualities are expressed
- actions that need to be done to further the purpose of the legislation, within the limits of the particular function
- the dictionary in schedule 2, which defines particular words used
- that the *Planning Act 2016* binds all persons to the same extent as SPA.

### Chapter 2 – Planning

This chapter describes the planning instruments (state and local) within the framework and how they relate to each other. It also covers superseded planning schemes and compensation, as well as infrastructure designations.

#### State planning instruments

The new legislation expresses how state planning instruments are made and changed.

There are only two state planning instruments – the State Planning Policy (SPP) and Regional Plans – in the new arrangements. The SPP has precedence if there is any conflict between the two instruments. Consultation and community engagement arrangements, like public notification and Regional Planning Committees, are carried forward in the new arrangements.

**Learn more...** Read the draft **Planning Regulation** to understand how the current State Planning Regulatory Provisions and the required contents from the Queensland Planning Provisions will work in the new arrangements.



# Better Planning for Queensland

## Planning Act 2016

### Local planning instruments

The new Act covers how local planning instruments are made and changed, and how they relate to other instruments. Local planning instruments are:

- Planning Schemes
- Temporary Local Planning Instruments
- Planning Scheme Policies.

Processes for making these local instruments are largely described in other instruments, like the Minister's Guidelines and Rules.

The new arrangements include more flexibility for local government to negotiate with the state a process for plan making that better suits the community's needs. This is based on a set of principles, and there is a standard default process which can be used, if preferred. State interests can be considered much earlier in plan development too.

**Learn More...** the draft interim **Minister's Guidelines and Rules** to find those relating to plan making processes. You may wish to read this document to understand how these arrangements work.

Community consultation is given greater prominence as the rules mandate key expectations for consultation.

**Did you know...** a toolkit for community consultation will be available to inform local government's plan making processes and support the principles for engagement set in the **Minister's Guidelines and Rules** instrument.

A Temporary Local Planning Instrument are given a life of up to two years and there is a new capacity to amend them. They can also activate upon the making of a council resolution, but this is in limited circumstances and the Planning Minister needs to have given prior approval for this to occur.

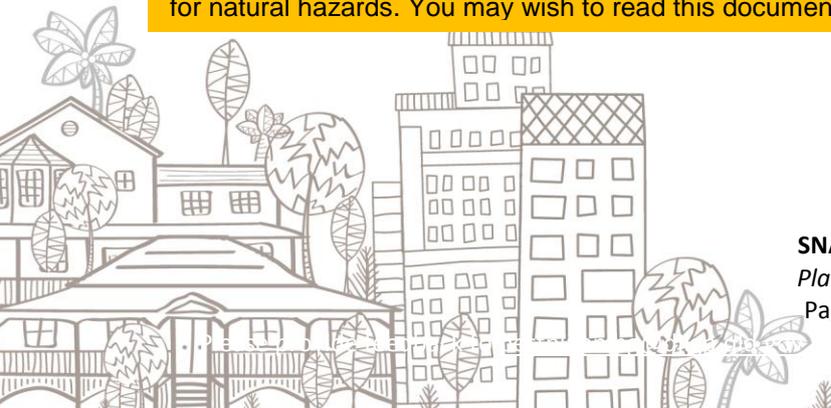
This part also includes the ministerial power to direct action about local planning instruments and related matters.

### Superseded planning schemes

Applications can still be made asking the local government to consider applying a superseded planning scheme to a development proposal. The new Act provides for how a request is made; the decision; when development is to start; and related matters.

Compensation, in relation to adverse planning changes, carries forward and now sits with the provisions for superseded planning schemes. New arrangements are in place for planning changes as a result of natural hazards.

**Go to...** the draft interim **Minister's Guidelines and Rules** to find arrangements relating to plan making processes for natural hazards. You may wish to read this document to understand how these work.



# Better Planning for Queensland

*Planning Act 2016*

## Designation of premises for development of infrastructure

This part provides for who may designate (Planning Minister or local government); what the designation may provide for; amendments; duration and extension; and the continuing requirements for them to be noted in the planning scheme. It provides for a prescribed guideline made by the Planning Minister to establish a process for carrying out the assessment and consultation for a proposed designation or amendment of a designation.

**Go to...** the draft interim **Minister's Guidelines and Rules**, which contain the guidelines for state and local government designation processes to understand how these arrangements work.



# Better Planning for Queensland

Planning Act 2016

## Chapter 3 – Development assessment

The development assessment chapter contains the most significant and foundational changes for the planning system.

This chapter describes categories of development and assessment; how to make, change, assess and decide development applications; the development assessment rules; rights and responsibilities for development approvals, including how to seek changes to development approvals; the Planning Minister’s powers in relation to the development assessment system; and miscellaneous provisions.

### Types of development and assessment

The new Act provides for three types of assessment – accepted, assessable and prohibited – along with the concept of a **categorising instrument** (an instrument that categorises development) and **assessment benchmarks** (matters an assessment manager is to assess against), and exemption certificates for particular assessable development.

Categories of development are framed differently to SPA as a core element of the reforms but the presumption remains that development is accepted if it is not categorised otherwise.

### Categories of assessment

Accepted	Assessable		Prohibited
All development other than assessable or prohibited development or identified as such in a categorising instrument.  This is a combination of SPA’s exempt and self-assessable categories.	Development a categorising instrument states can only be carried out with a development approval.		Development identified in a categorising instrument as prohibited.  This carries forward the same arrangements as currently in SPA.
	<b>Code assessment</b>	<b>Impact assessment</b>	
	A <u>bounded</u> assessment.  <u>Must</u> be assessed <b>only</b> against assessment benchmarks (stated in the categorising instrument) and having regard to matters prescribed by the regulation. The assessor must approve the development application to the extent it complies with assessment benchmarks, or if compliance with assessment benchmarks can be achieved by imposing development conditions	<u>Must</u> be carried out against the assessment benchmarks and having regard to any matters prescribed by regulation, and may be carried out against or having regard to any other relevant matters such as planning need or the current relevance of the assessment benchmarks in the light of changed circumstances.	

Exemption certificates are introduced, and the new Act explains their function, duration and effect, and who may give them and in what circumstances.



# Better Planning for Queensland

## Planning Act 2016

### Development applications

In this section, the Act:

- explains how a person may make a development application to an assessment manager for a development approval to carry out assessable development, which includes a right for a person to seek a preliminary approval or variations to a local planning instrument (variation request)
- details the role of the assessment manager
- makes arrangement for alternative assessment managers for code assessment where the local government decides to use this approach
- explains development approvals, preliminary approvals and development permits.

The Act also establishes that development applications must be accompanied by evidence of the consent of the owner of the premises. It establishes what a 'properly made' development application is and what the assessment manager must or may accept in this regard.

The Act also establishes arrangements for the applicant to change or withdraw their development application, before it is decided.

**Public notification** is required for development applications that require impact assessment or that include a variation request. Notice must be given in the way stated in the development assessment rules. The Act also expressly provides that where a development application is notified, any person may make submissions about the application.

### Assessing and deciding development applications

This part deals with matters such as:

- referral agency's assessment and response
- assessment manager's assessment and decision
- assessing and deciding variation requests
- decision notices
- deemed approval of certain development applications that require code assessment
- permitted and prohibited development conditions.

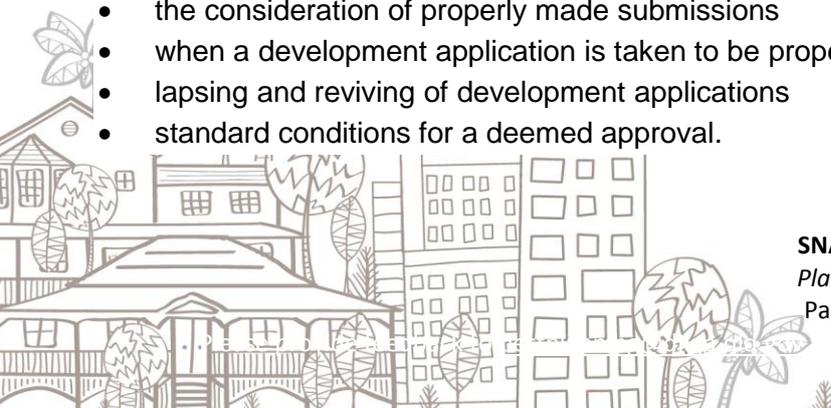
### Development Assessment Rules

The Minister must make Development Assessment Rules (DA Rules) for the development assessment process that is given effect through the Planning Regulation. The DA Rules are a statutory instrument and must be followed for making, assessing, changing and deciding a development application.

The rules are to include matters such as:

- how public notification is to be carried out
- the consideration of properly made submissions
- when a development application is taken to be properly made
- lapsing and reviving of development applications
- standard conditions for a deemed approval.

**Read...** the draft interim **DA Rules** to understand how these arrangements work.



# Better Planning for Queensland

*Planning Act 2016*

## Development approvals

The effects and duration of development approvals and when they lapse, and how they may be extended, changed or cancelled are provided for in the new Act. The process for making a change application to a development approval (formerly a permissible change in SPA) has also been amended to provide greater clarity, and to allow for changes that are minor or not minor.

## Minister's powers

Ministerial powers are found in this part, including directions and call-ins, which are limited to where the matter involves, or is likely to involve, a state interest. The Planning Minister's current two-step process for call-ins, which includes a process for seeking representations about a proposed call-in, is included in the Act.

## Miscellaneous

This section provides for miscellaneous matters including about restriction on use or preservation covenants; a limitation of liability where an assessment manager or responsible entity has failed to have regard to a relevant matter that was the subject of a direction by, or action of, the Planning Minister; the regulation prevailing over local categorising instruments; and a power to refund or waive fees.



# Better Planning for Queensland

*Planning Act 2016*

## Chapter 4 – Infrastructure

This chapter provides for local government infrastructure charges and resolutions; conditions on infrastructure, including those imposed by state infrastructure providers; and infrastructure agreements.

### Provisions for local governments

Local governments are authorised to do either or both of the following for development approvals in relation to trunk infrastructure:

1. adopt, by resolution, charges for development infrastructure and levy charges in accordance with the resolution
2. impose particular conditions about development infrastructure.

Local governments are also authorised to impose particular conditions for non-trunk infrastructure.

The new legislation confirms the extended current statutory timeframe for the making of a Local Government Infrastructure Plan (LGIP) to 1 July 2018. It also provides for automatic indexing of charges.

<b>Provisions for state infrastructure providers</b>	State infrastructure providers are authorised to impose particular conditions on development approvals about infrastructure.
<b>Infrastructure agreements</b>	Provisions are made for the holding and selling of particular local government land held on trust which was given to, or taken by, the local government for public parks infrastructure or local community facilities under this chapter.
<b>Miscellaneous</b>	Provisions are made for the holding and selling of particular local government land held on trust which was given to, or taken by, the local government for public parks infrastructure or local community facilities under this chapter.



# Better Planning for Queensland

*Planning Act 2016*

## Chapter 5 – Offences and enforcement

This chapter is about offences (including development offences); enforcement notices; proceedings in a Magistrates Court; powers for development offences in the Planning and Environment Court; inspectors and their enforcement powers and miscellaneous provisions.

<b>Development offences</b>	Development offences are created, as well as exemptions with respect to emergency work.
<b>Enforcement notices</b>	Show cause and enforcement notices are provided for, including penalties, notification, stays, applications in response and remedying contravention.
<b>Offence proceedings in Magistrates Court</b>	Offences against the <i>Planning Act 2016</i> are established as summary offences and proceedings for offences, proceedings brought in a representative capacity, fines, recovery of investigation expenses, and remedial orders are also covered.
<b>Enforcement orders in Planning Court</b>	The powers of the court in relation to remedying or restraining the commission of a development offence are established.
<b>Inspectors</b>	Arrangements are established for inspectors and their powers in relation to entry and enforcement.
<b>Miscellaneous</b>	It is confirmed that in certain circumstances the provisions of other Acts will prevail over this one to the extent of inconsistency. False or misleading documents are also covered, as is liability of executive officers for certain offences.



# Better Planning for Queensland

*Planning Act 2016*

## Chapter 6 – Dispute resolution

While Queensland’s dispute resolution system is generally very well-regarded nationally and internationally, improvements can be made. This chapter is about resolving disputes in development assessment and other processes under the new Act, including appeals and the Development Tribunal (currently named the Building and Development Dispute Resolution Committee).

<b>Appeal rights</b>	Rights to appeal to a tribunal or the Planning and Environment Court about matters are set out, with appeal periods, how they are commenced and service requirements, and compliance with the rules of the court. Non-appealable decisions are also established.
<b>Appeals to tribunal</b>	Appeals to the tribunal can only occur in relation to particular matters. These are described and include appeals in relation to development applications and approvals; building plumbing and drainage matters; and charges.
<b>Appeals to the Planning Court</b>	Rights to appeal to the Planning and Environment Court are described including eligible submitter appeals.  The establishment of the Planning and Environment Court, its administration and costs rules are set out in the Planning and Environment Court Act.
<b>Development Tribunal</b>	The Tribunal is established in the <i>Planning Act</i> , including the appointment of referees, referee’s registrar, remuneration, refunding fees and tribunal proceedings.  Declarations to be made by the Tribunal are provided for, and cover the conduct of hearings, power to end tribunal proceedings, rights to appear, appeals, and confirms no orders can be made as to costs for tribunal matters.

**Go to...** the *Planning and Environment Court Act 2016*. You may wish to read this Act to understand how arrangements will work.



# Better Planning for Queensland

*Planning Act 2016*

## Chapter 7 – Miscellaneous

This chapter contains a number of miscellaneous provisions, including existing use rights; taking or purchasing land for planning purposes; public access to documents; urban encroachment; party houses and provisions for making guidelines and regulations.

<b>Existing uses and rights protected</b>	Provisions preserving lawful uses are carried forward.
<b>Taking or purchasing land for planning purposes</b>	This part preserves the power for local governments to take or purchase land in certain circumstances.
<b>Public access to documents</b>	This part establishes requirements for access to documents, for the content of planning and development certificates and provision for the <i>Information Privacy Act 2009</i> .
<b>Urban encroachment</b>	The continuation of the urban encroachment arrangements of SPA is provided for.
<b>Other provisions</b>	A range of miscellaneous matters are covered in this part including party houses, application of the court evidentiary provisions, electronic service, referential provisions, ministerial delegation, approved forms and the guideline-making and regulation-making powers.

**Go to...** the draft **Planning Regulation** to understand how the new arrangements will work.



# Better Planning for Queensland

*Planning Act 2016*

## Chapter 8 – Repeal, savings and transitional provisions

Generally, the new Act seeks to ensure that matters that were valid at the repeal of SPA will remain valid under new legislation.

It includes some general provisions about the treatment of instruments, process and other matters, as well as some more specific provisions that provide further detail about, or qualifications or exceptions to, those general provisions.

The provisions transition compliance assessment and code assessment to code assessment; and transition impact assessment to impact assessment (which must be publicly notified).

## Schedule 1 – Appeal rights

The ease of use and understanding, appeal rights have been consolidated in schedule 1.

## Schedule 2 – Dictionary

For ease of use and understanding, the new legislation has, as far as possible, kept all definitions together in this schedule.

## Other documents

**Go to...** the *Planning and Environment Court Act 2016* and the *Planning (Consequential) and Other Legislation Amendment Act 2016*. Please also consider the **Minister's Guidelines and Rules**, which cover plan making and amendment, infrastructure designation for state and local governments, and local government infrastructure plans; and the **Development Assessment Rules**.

You may wish to read these Acts and instruments to understand how arrangements might work.

