



Growth Management Queensland



Review of Queensland Iconic Places legislation

Discussion paper

August 2010



How to have your say

We welcome your comments on the issues outlined in this discussion paper. Your views will be considered as part of the development of the Queensland Iconic Places legislation review report.

Please consider the questions posed on page 10 when making submissions.

Closing date

Submissions close at 5 pm on 6 September 2010.

How to deliver your feedback

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Introduction

In August 2007, the government made a commitment to prepare new legislation to give greater protection to the state's nationally and internationally recognised natural icons located in the areas of new regional councils. This commitment addressed concerns that distinguishing characteristics of local government areas may be overlooked by the larger regional councils established under the local government reform.

The *Iconic Queensland Places Act 2008* (IQPA) and the *Iconic Queensland Places Regulation 2008* (IQP regulation) were developed to protect particular places in Queensland with iconic characteristics or qualities. The IQPA protects established iconic places by providing for the declaration of iconic places; decision making processes regarding modification of laws; and procedures about planning, development assessment and local laws by local governments. The IQP regulation provides for matters specific to the iconic panels established under the IQPA, such as a register of interests and a code of conduct.

The state government, through Growth Management Queensland (GMQ), is leading the way with a focused approach to growth management to help shape tomorrow's Queensland. GMQ will oversee the review of the Queensland Iconic Places legislation to ensure the government continues to deliver good planning outcomes by protecting Queenslanders' lifestyle and environment.

Scope of the review

Under the IQPA, the Minister is required to review the legislation and lay a report before the Legislative Assembly within 3 years after the commencement of the Act. A report is therefore due by 6 March 2011.

Section 72 of the IQPA requires that in carrying out the review, the Minister has regard to the operation and effectiveness of the Act. In addition, the Minister must have regard to the effectiveness of the operations of panels and the need to continue their functions.

The review will consider the effectiveness of mechanisms and processes provided for the protection of iconic places in the IQPA. This includes the role of the panels and the regional councils in implementing the IQPA.

Whole-of-government policy initiatives that may impact on the operation of the iconic legislation will also be considered in the review.

Where are iconic places located?

Four areas in Queensland have been approved by the Minister for Planning and declared in the government gazette. They are:

- Blackall Range
- Central Capricorn Coast (Livingstone Localities)
- Douglas
- Noosa.

No new iconic places can be declared as the 30 June 2008 time limit for declaration of iconic places has passed.



How iconic places legislation works

The IQPA modifies certain existing development decision making processes for which adequate accountabilities and rights of review or appeal already exist. The modifications are intended to enhance community confidence in further development of planning instruments, development assessment processes and local law and policy making in such a way to be consistent with the protection of the character of their iconic communities.

The modifications establish transparent processes for the consideration of the impact of the proposed law on the iconic place's values and do not compromise existing rights or responsibilities of landholders in iconic places.

The IQP regulation provides for requirements specific to the members of iconic development assessment panels, such as a code of conduct, conflicts of interest and ethics principles. These requirements are similar to those relevant to councillors under the *Local Government Act 2009*.

The IQPA Framework

The IQPA contains provisions that:

- enable declarations about iconic places to be made
- apply if proposed amendments to planning schemes or local laws could affect iconic places
- establish development assessment panels in iconic places
- establish the process for a panel deciding or not deciding a development application
- give the Planning Minister powers in relation to reference decisions made by a panel
- provide for various other matters relevant to development applications and planning law.

The mechanisms and role of the development assessment panels are discussed in more detail on page 5 – How development assessment works under the IQPA.

Legislative changes since 2008

When enacted in 2008, the IQPA complemented existing planning and development assessment arrangements under the *Integrated Planning Act 1997* (IPA) and local law development under the *Local Government Act 2009* (LGA). Since commencement of the IQPA, the IPA has been replaced by the *Sustainable Planning Act 2009* (SPA) and parts of the LGA have been repealed and replaced.

The IQPA has not been fundamentally affected by these major legislative amendments. However, the relationship between the IQPA, the SPA and the LGA will be considered as part of the review process.

Protection of iconic values

Iconic values are protected in the IQPA by:

- providing for the declaration of iconic places, their iconic values and the relevant planning and local law instruments that currently protect those values
- modifying laws and procedures about local law development, planning and development assessment and policy making by local governments to ensure consideration of the iconic values of declared iconic places.



What is an iconic value?

The IQPA defines an iconic place as 'the characteristics or qualities of the place's natural or built environment that the Minister is satisfied reflect or contribute in a substantial way to Queensland's character'.

The characteristics or qualities that comprise iconic values vary from one iconic area to another as they are specific to a particular area. Each declared iconic place lists iconic values along with the location of iconic places and protected planning provisions, against which development applications relevant to iconic places are assessed.

Information on the iconic values of each declared iconic place is available on the departmental website at www.dip.qld.gov.au.

How development assessment works under the IQPA

The development assessment process

The process for deciding development applications follows the timelines in the Integrated Development Assessment System (IDAS) provided formerly in the IPA and now in the SPA.

Applicants and submitters have the same appeal rights they have under the SPA. Under the IQPA relevant local governments also have the right to appeal decisions made by the development assessment panels. The Minister has the power under the IQPA to reverse a reference decision of a development assessment panel provided the panel has not already decided an application and issued the decision notice.

The role of development assessment panels

The role of the panels is to act as the assessment manager instead of the local government (regional council) for development applications that may have a substantial effect on the iconic values of a declared iconic place.

The panels have no additional powers than a local government would have in the development assessment process and panels are required to make their decisions in accordance with the relevant protected planning scheme provisions and the existing decision rules of the SPA. There are no additional fees for development applications that are decided by panels.

All development applications for which a council is the assessment manager must be given to the panel for the making of a 'reference decision'. A panel's reference decision is an additional step for councils in the IDAS process under the SPA. The panel is not there to decide all development applications relevant to an iconic area. The panel's role is to decide applications that may have a substantial effect on the iconic values of a place.

The reference decision process allows a development assessment panel to make a decision on which applications it will decide instead of the local government. Applications that the development assessment panel does not wish to decide are decided by the local government within the established IDAS timeframes.

Reference decision process

The reference decision process occurs during the information and referral stage of the IDAS process. The IQPA requires a panel to make the reference decision within the earliest of:

- 20 business days after receiving the application from council; or
- 20 business days after the information request period under IDAS ends.



If the decision is not made within this timeframe, the reference decision is taken to be that the panel will not decide the application and council will be the assessment manager.

The regional council sends development applications (other than building applications relevant to an iconic area) to the project manager within 10 business days of issuing an acknowledgment notice, or after receiving the application if no acknowledgment notice is required.

A departmental project manager assesses the information and prepares a report which is forwarded to the panel. After the panel makes a decision on which applications it wishes to decide, the project manager advises council which applications have been referred to the panel. The project manager then notifies the relevant parties of the reference decision.

Application decision process

If a development assessment panel's reference decision is to decide an application, the panel makes the decision in place of the local government. The local government continues to assess the application under IDAS up to, but not including, issuing a decision notice. Council provides its recommendations and supporting documents to the project manager.

Under the SPA the panel has 20 business days to decide an application. Under the IQPA however, the panel can defer deciding an application for 20 business days after the decision making period ends. The total timeframe for deciding an application can be up to 40 business days (8 weeks).

Decisions made by development assessment panels

Douglas Development Assessment Panel

The panel was appointed by the Minister on 20 June 2008 and the first business meeting was held on 12 August 2008.

August 2008–30 June 2010—Reference decisions

No. of reference decisions made by the panel	No. of applications to be decided by council	No. of applications to be decided by the panel	No. of applications decided by the panel where an IDAS decision notice has been issued by 30 June 2010 or decision being negotiated	No. of applications yet to be decided by the panel
178	122	56	40/56	16

There were three (less than two per cent) reference decisions for building work applications.

Development assessment decisions

No. of applications approved or approved with conditions	No. of applications refused	No. of lapsed/withdrawn/not properly made applications	No. of panel's decisions inconsistent with council's recommendation	No. of appeals
40	17	7/56	3	5



The panel has chosen to decide approximately 31 per cent of development applications. Out of the four panels, this is the highest percentage of applications being decided by a panel. Of the 40 decisions issued by the panel so far, three were inconsistent with the recommendation by council.

There were no reversals of the panel's decisions by the Minister.

Noosa Development Assessment Panel

The panel was appointed by the Minister on 29 August 2008 and the first business meeting was held on 16 September 2008.

August 2008–30 June 2010—Reference decisions

No. of reference decisions made by the panel	No. of applications to be decided by council	No. of applications to be decided by the panel	No. of applications decided by the panel where an IDAS decision notice has been issued by 30 June 2010	No. of applications yet to be decided by the panel
785	768	17	8/17	9

There were 427 (54 per cent) reference decisions for building work applications.

Development assessment decisions

No. of applications approved or approved with conditions	No. of applications refused	No. of lapsed/withdrawn/not properly made applications	No. of panel's decisions inconsistent with council's recommendation	No. of appeals
7	1	1/17	1	1

The panel has chosen to decide approximately two per cent of development applications. Of the eight decisions issued by the panel so far, only one was inconsistent with the recommendation by council.

There were no reversals of the panel's decisions by the Minister.

Blackall Development Assessment Panel

The panel was appointed by the Minister on 9 April 2009 and the first business meeting was held on 29 April 2009.

August 2008–30 June 2010—Reference decisions

No. of reference decisions made by the panel	No. of applications to be decided by council	No. of applications to be decided by the panel	No. of applications decided by the panel where an IDAS decision notice has been issued by 30 June 2010	No. of applications yet to be decided by the panel
16	13	3	0	2



There were two reference decisions (12.5 per cent) for building work applications.

Development assessment decisions

No. of applications approved or approved with conditions	No. of applications refused	No. of lapsed/withdrawn/not properly made applications	No. of panel's decisions inconsistent with council's recommendation	No. of appeals
0	0	1/3	N/A	0

The Blackall Range Development Assessment Panel has recently chosen to decide two development applications. No decisions have yet been issued by the panel.

Central Capricornia Coast (Livingstone Localities) Development Assessment Panel

The panel was appointed by the Minister on 9 April 2009 and the first business meeting was held on 21 April 2009.

August 2008–30 June 2010—Reference decisions

No. of reference decisions made by the panel	No. of applications to be decided by council	No. of applications to be decided by the panel	No. of applications decided by the panel where an IDAS decision notice has been issued by 30 June 2010	No. of applications yet to be decided by the panel
221	212	9	5/9	4

There were 121 (55 per cent) reference decisions were for building work applications.

Development assessment decisions

No. of applications approved or approved with conditions	No. of applications refused	No. of lapsed/withdrawn/not properly made applications	No. of panel's decisions inconsistent with council's recommendation	No. of appeals
4	1	0	1	1

The panel has chosen to decide approximately four per cent of development applications. Of the five decisions issued by the panel so far, one was inconsistent with the recommendation by council.

There have not been any reversals of the panel's decisions by the Minister.

Summary

The low number of development applications the panel chose to decide indicates that most development applications in an iconic area do not affect iconic values.

The number of reference decisions made by one of the panels is inflated by the inclusion of building applications. As it was not intended to capture building work applications, IQPA was amended in June 2009 so that panels no longer needed to refer building applications.



Notwithstanding that, the number of applications that the panels considered would affect iconic values is small.

The ability of the Minister to reverse a panel's decision under Part 4, Division 5 of the IQPA can occur after a reference decision is made by a panel and before a development application is decided by that panel. This mechanism has not been exercised to date.

Impact of the IQPA on local government decision making

Development assessment

Iconic values have been declared in the local government areas of the Sunshine Regional Council, the Rockhampton Regional Council and the Cairns Regional Council.

Under the IQPA councils are required to send relevant applications, supporting information and for some applications, recommendations, to panels. These actions are required in addition to a council's responsibilities under the SPA.

Planning instruments and local laws

Parts 5 and 6 of the IQPA protect iconic values by providing that iconic values must be considered by a council that wishes to amend a planning scheme, structure plan, a temporary local planning instrument or local laws.

In each case, the council must produce a report about the impact on iconic values and submit it to the Minister. Additional requirements apply if consultation or consideration of state interests is to occur with regard to any of the proposed actions. If the Minister considers that iconic values are affected, he may decide that the proposal may not proceed, or that it may proceed with conditions that preserve iconic values.

To date, these provisions have only been used once. The Rockhampton Regional Council is currently using the process in the IQPA in relation to a proposed amendment to its planning scheme.



Questions for submitters

As discussed throughout this paper, the IQPA was introduced to ensure that iconic values are considered in planning and development decision making and in relation to amendment of planning policies and local laws.

Do you think the IQPA continues to be the most effective way to protect the iconic values of declared iconic places in Queensland?

If so, can you suggest any improvements to the effectiveness of the current framework?

If not, do you think local governments should resume responsibility for the protection of local iconic values, through local planning schemes?

As part of the IQPA, development assessment panels have been established to minimise the impact of development in declared iconic places.

Do you think the panels should continue to operate in declared iconic places in Queensland?

If so, can you suggest any improvements that would make the role of the panels more effective and efficient?

If not, do you think the Integrated Development Assessment System (IDAS) under the *Sustainable Planning Act 2009* allows local governments to adequately protect iconic values without the extra layer that is the panels?

Do you think there is a different model that should be considered by state and/or local governments to ensure continued protection of iconic values in declared iconic places in Queensland?

What happens next?

Submissions made in response to this discussion paper will be collated and analysed as part of the review process. Your time and effort to make a submission is appreciated.

The outcome of this review will be outlined in a report the Minister intends to lay before Parliament by early 2011.

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