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The Case for Legislative Reform Historical Approval provisions of the Integrate Planning Act and Integrated Development Assessment System

The coastal regions of Queensland are all facing the common problems arising largely from the failings of state planning instruments to deal with population growth and booming property markets. Compounding this is the lack of political will to curtail development and act on past approvals and perceived use rights. Prevention of the ongoing fragmentation and loss of habitat has become critical to the ongoing survival of many coastal landscapes. The conservation movements has long identified the need for a development approvals process that is consistent, open and transparent.

The Conservation Movement Proposes:

- **All extant Pre-IPA approvals are cancelled, or sunsetted after a fixed period, and re-assessed under current standards of environmental and coastal protection if they wish to develop them.**
- **All new and uncommenced development proposals must be subject to the same current standards of regulatory controls and environmental protection, regardless of tenure, zoning or unused historic approvals.**
- **No more fast-tracked resort developments using the State Development and Public Works Organisation Act 1971. (As is currently underway at Ella Bay near Innisfail)**
- **There must be a readily accessible database of lodged applications to enable any interested party to quickly identify the likely impacts of any proposed developments.**
- **The information lodged with any application must be readily available to any interested party. A website with downloadable applications and approvals, as maintained for controlled actions under the EP&BC Act, should be set up for IPA applications.**

Why the Integrated Planning Act 1997 Needs Reform

The Integrated Planning Act 1997 (IPA) commenced in 1998 and, in common with most recent legislation, and in spite of continual and incremental development and change, is after 10 years under review and found to be in need of major reform. These reforms are required to correct problems:

- in the original drafting of the Act;
- in properly implementing State interests through local government planning schemes;
- of complexity that have arisen from the large number of different approvals processes that have been rolled into IPA and the subsequent large number of possible referrals that have to be considered by applicants;
- **of feelings of community non-participation in the creation of new planning schemes and lack of opportunity to oppose unpopular, unwanted and incompatible developments;**
- **of lack of power (both statutory and the political will) to regulate historic land-use approvals, especially for large-scale coastal resorts:**

and many more listed in the Reform Agenda at:

<http://www.dip.qld.gov.au/planning-reform/index.php>

The last two points are the ones of main concern to Queensland conservation groups, along with local government being obliged to implement State interests, such as in coastal, environmental and endangered habitat protection, also being very significant.

IPA's declared purpose is: "to seek to achieve ecological sustainability by—

- (a) coordinating and integrating planning at the local, regional and State levels; and
- (b) managing the process by which development occurs; and
- (c) managing the effects of development on the environment (including managing the use of premises)"

Sounds great, but IPA again fails to deliver Ecological Sustainability as it basically allows the developer to propose almost anything anywhere as the old lists of prohibited uses for particular land-use zonings don't exist anymore. Local government has to build grounds for rejecting applications for inappropriate uses into their planning schemes and to be prepared to defend their decisions against appeals. There is no restriction on how many times an applicant can lodge the same application, regardless of how inadequate it is, and no obligation on them to supply all the information requested by the assessment manager. This puts many Councils in the position of having to assess their financial ability to defend a refusal in Court as part of their decision-making process, which is hardly an effective way of protecting the environment from damaging developments. There is little doubt that there have been cases of developers pushing large projects through small Councils that, firstly, lack the planning scheme and the professional and financial resources to carry out a proper assessment, and, secondly, the political will to issue a refusal and the financial resources to oppose an appeal.

Historic Approvals and Development Leases

These are by far the biggest issue of concern for the conservation movement. The IPA Reform Agenda states:

"Some lands that remain undeveloped are subject to some form of development approval or expectation granted many years ago. Improvements to legislation and statutory planning policy and instruments have occurred since these occurrences were created. As a result, the approved or anticipated development is often inconsistent with contemporary planning policies (including development standards), environmental requirements and community expectations. In many instances, development of historic approvals or leases **have not started and have no required end-date for completion** (my highlighting).

These historic approvals and development leases can either confer or imply use rights, and hence development proponents may have expectations that development can occur. Such approvals are not transparent to the public and are not quantifiable by government (State or local). As a consequence, ***the full extent of historic approvals and their potential impacts are unknown.***” (my highlighting)

In other words the State government bureaucrats responsible for planning aren't really sure how many of these historic approvals there are or exactly where they are. The recent marketing of blocks with no road access and subject to tidal inundation at the mouth of the Russell/Mulgrave River was just one example of how a developer can try and take advantage of these old land-use zonings. As well as historic resort approvals there are also many undeveloped or abandoned surveyed towns scattered across Queensland and along the coast. These also present the white-shoe brigade with amazing opportunities for inappropriate development.

The resulting challenge has largely been left to the conservation movement to fight out on a local, case-by-case basis and has been especially challenging for the small community-based conservation groups along the coast, perhaps even more so after the recent local government amalgamations.

What the IPA Reform Agenda Proposes to do about it – Effectively Very Little

The Reform Agenda states:

“The Department (DLGPSR) will contribute to a whole-of-Government approach to managing historic approvals and the tightening of policy on inappropriate development in sensitive environments. The proactive management of these approvals will provide better development outcomes consistent with contemporary community interests and planning and development practices, together with reduced impacts on some of Queensland's most sensitive environments.”

They intend to achieve this by carrying out a:

“systematic and integrated whole-of-government review of all unimplemented historic approvals and any related development leases, which should include:

- locating and compiling a database of historic approvals and related development leases from records of relevant State agencies and local governments;
- a comprehensive analysis of historic approvals to accurately define the scope of the problem;
 - the identification and evaluation of options to address the issues associated with historic approvals.”

As it stands, it looks very much like a classic “mirror” response of looking into a problem, but doing nothing to fix it.

How would you sunset Pre-IPA Approvals?

The State Government claims to be hamstrung by its inability to locate all these historic approvals and so therefore cannot hope to give the owners of these approvals notice of any impending removal of their development rights.

This is a hollow argument that could be solved in many ways. For example, all rates notices to all landholders in Queensland could carry the notice that all historic approvals are now covered by a *use it or lose it* provision. In this way, no landholder can claim they have not been notified.

Types of Historic Approvals

Historic approvals and development leases can either explicitly grant, or implicitly give expectations for, development rights. These historic approvals can be in many forms, but the main ones are:

1. **Development leases** – The Reform Agenda is being very coy when it states “A number of development leases were granted by the State during the 1970s and 1980s when there were less rigorous planning, development and environmental requirements, but greater expectations that all subsequent and required approvals could be readily obtained.” Post-Fitzgerald Commission it would fair to say that many of these would have been based on “favours” in plain brown envelopes and not subject to any form of land suitability or impact assessment for the proposed resort.
2. **Rezoning approvals** – Some developers applied for these rather than development approvals so that there would be an as-of-right use on the planning scheme, which, unlike an approval, never lapses unless the planning scheme is subsequently changed. Local governments have been reluctant to make such changes because of compensation rights carried over from previous planning legislation into IPA. IPA has also been drafted so that any attempt to change these rezonings under the new IPA planning scheme triggers the superseded planning scheme provisions. Some local governments have opted to carry over previous rezonings in their IPA planning schemes, because they also do not wish to give rise to superseded planning scheme applications which are unlikely to conform to contemporary planning standards or community expectations. This issue of the application of superseded planning schemes is another flaw in IPA that needs to be fixed. All current applications should be assessed under current legislation, standards and planning schemes. Many of these rezonings have been around for 15 to 20 years and it is high time they were killed off.
3. **Resorts and Mixed use Schemes** - In the 1980s the Integrated Resort Development Act 1987 (IRDA) and the Sanctuary Cove Resort Act 1985 (SCRA) were introduced to allow large scale resorts to be established with a minimal approvals process. When this legislation was enacted it was assumed resorts would be approved and fully developed by a single developer within approximately ten years. This has not happened in every case and there are an unknown number of uncommenced approved resort schemes still shown as special zonings on local government planning scheme maps. An approved scheme under the IRDA regulates the development and use of resort land and effectively overrides the local government IPA planning scheme. Local government local laws that are inconsistent with the IRDA or the approved scheme do not apply to a resort site. A register of all these approved resort schemes is required to be kept at the DLGPSR head office in Brisbane and copies should have been sent to the relevant local government for the approved resort site.

Similar to the IRDA and SCRA, the Mixed Use Development Act 1993 (MUDA) also facilitates the establishment of mixed use developments. A number of these schemes still have undeveloped land subject to preliminary approvals in effect today. However, even though these schemes do not override local government planning controls, the undeveloped sections of them may still be subject to superseded planning scheme provisions

Based on a discussion paper prepared by Brynn Mathews for Cairns and Far North Environment Centre, January 2008