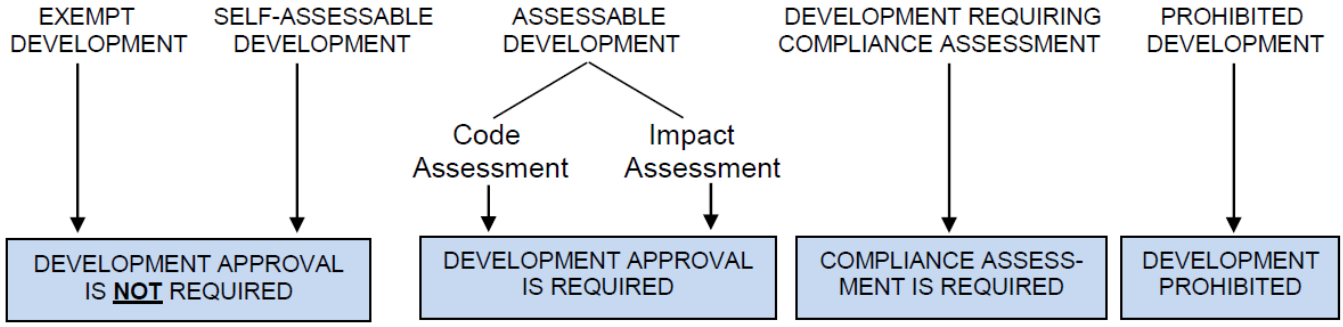
Flowchart for the Integrated Development Assessment System (IDAS) of the *Sustainable Planning Act* 2009 (Qld)[1]

STEP 1. PRELIMINARY QUESTIONS

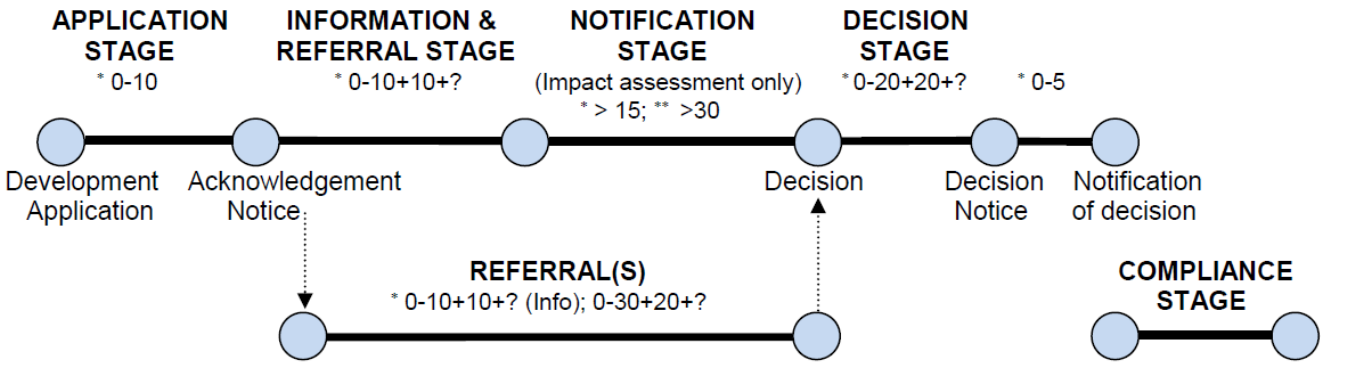
1. **Does the proposal involve "development"?** (ss 7 & 10, *Sustainable Planning Act* 2009 (Qld) (SPA))

2. **What category of development is it?** (s 231 and Schedule 1 (Prohibited development) of SPA, plus Schedules 3 & 4 of the *Sustainable Planning Regulation* 2009 (Qld) (SP Reg), the relevant planning scheme and any other relevant planning instrument) and Ch 2 of the *Building Act 1975* (Qld).



3. **Which levels of government and departments are involved in the assessment process?**
   - Who is the **assessment manager** listed in Schedule 6 of the SP Reg (including private certifiers for building development applications assessed under Ch 4 of the *Building Act* 1975 (Qld))?
   - Is any **referral agency** listed in Schedule 7 of the SP Reg?

STEP 2. PROCESS REQUIREMENTS OF IDAS (see Chapter 6 of SPA)



* Numbers refer to time limitations for normal IDAS application in business days.
** Time limit for public notification for certain IDAS applications specified in s 298.
? Unlimited time if applicant agrees.

STEP 3. APPEAL AGAINST A DECISION

Following a decision, the applicant and any submitters (for impact assessable development), have 20 business days to appeal to the Planning & Environment Court (ss 461-480 of SPA). Appeals are, however, relatively rare with less than 5% of approximately 20,000 decisions under SPA each year appealed. If a decision is appealed, the application is considered "anew" by the Court (s 495 SPA). This means that the Court decides the appeal on its merits according to the planning scheme, other relevant planning instruments, and expert evidence from town planners, ecologists, engineers, etc. Appeals that do not settle normally take around 6 months to resolve. A further appeal against a decision of the Planning and Environment Court can be made to the Court of Appeal for errors of law or jurisdiction only (s 498 SPA).

[1] Extracted from Chris McGrath, *Synopsis of the Queensland Environmental Legal System* (5th ed, Environmental Law Publishing, Brisbane, 2011), available at http://www.envlaw.com.au/sqels5.pdf.

Understanding the concept of "use" in town planning (including under the *Sustainable Planning Act* 2009 (Qld))

The concept of a "use" of land is not defined in the *Sustainable Planning Act* 2009 (Qld)[2] but is central to the operation of the Act through concepts such as the protection of "existing lawful uses"[3] and the major category of development, "material change of use".[4] It has an important technical meaning in a town planning context that has been explained in past court decisions.

In *Newcastle City Council v Royal Newcastle Hospital* (1957) 96 CLR 493 at 515; 4 LGRA 69; [1957] ALR 277; 31 ALJR 201, Taylor J said in the context of determining whether a hospital used a large area of undeveloped bushland on its property:

> The uses to which property of any description may be put are manifold and what will constitute "use" will depend to a great extent upon the purpose for which it has been acquired or created. Land, it may be said, is no exception and … the "use" of land will vary with the purpose for which it has been acquired and to which it has been devoted.

In *Shire of Perth v O'Keefe* (1964) 110 CLR 529; 10 LGRA 147; [1965] ALR 70; 38 ALJR 83, Kitto J explained the meaning of "use" in a town planning context further. That case concerned whether an existing lawful use of land was properly described as "pottery making" or "light industry" under a by-law regulating land use in Perth. In holding that "pottery making" was the appropriate terminology to describe the purpose of the use occurring on the land for the purposes of the by-law, Kitto J stated (at 535):

> The application of the by-law in a particular case has therefore not to be approached through a meticulous examination of the details of processes or activities, or through a precise cataloguing of individual items of goods dealt in, but by asking what, according to ordinary terminology, is the appropriate designation of the purpose being served by the use of the premises at the material date ... The general considerations that have been mentioned will suffice for most cases. If premises were being used as professional offices at the commencement of the by-laws, no greater degree of particularity in defining the purpose is likely to appeal to practical minds as appropriate in the application of town planning legislation than is involved in saying that the purpose is that of professional offices: the particular profession of the occupant would not ordinarily be adverted to by a person speaking in a town-planning context.

In summary, a "use" of land is the purpose for which the land is used as understood in ordinary terminology and a town planning context. What constitutes a "use" of land is a matter of commonsense as expressed in the words used by ordinary members of the community to describe the activity occurring on the land. For example, a "restaurant" is a use of land and it unnecessary to describe the use as "a McDonald's Restaurant".

However, planning schemes and other planning instruments typically define relevant uses in a dictionary, schedule or similar part and those definitions should be applied when considering the application of the scheme or instrument. These definitions are generally based on the general principles of "use" established by the courts so it is important to be aware of the general principles when applying the definitions.

One issue that has been extensively litigated is the "use" of vacant land. A number of principles have been established by these cases.[5] Land can be used for a purpose even though no physical activity occurs on the land, as in the case of open space provided as a buffer and for clean air around a hospital. "Use" is not limited to actual physical use but includes passive use. Whether apparently vacant or unused land is in fact being used will depend on the extent of its integration with land in actual physical use and the nature of the business being conducted. The holding of unused land for future business use, whether because no business has yet been commenced or because the existing business has not yet increased sufficiently to justify expansion onto an extended site, is not "use".

To be an existing lawful use of land at a particular date, the use must actually be occurring at that date. Mere acquisition of land with the intention of using it for a particular purpose in the future would not make the possession of the land an existing use of it.[6] Land can have more than one use at any particular time.

---

[2] Beyond, unhelpfully, noting that "***use***, in relation to premises, includes any use incidental to and necessarily associated with the use of the premises" in Sch 3 (Dictionary) of SPA.

[3] See ss 9 and 681-687 of SPA.

[4] See ss 7 and 10 of SPA.

[5] See *Newcastle City Council v Royal Newcastle Hospital* (1956) 96 CLR 493; (1959) 100 CLR 1; *Parramatta City Council v Brickworks Ltd* (1972) 128 CLR 1; *Eaton & Sons Pty Ltd v Warringah Shire Council* (1972) 129 CLR 270.

[6] *Parramatta City Council v Brickworks Ltd* (1972) 128 CLR 1. Two useful examples of the type of factual examination undertaken by the courts to determine what constitutes the use of land at a particular date are *Rosenblum v Brisbane City Council* (1957) 98 CLR 35 at 45-46; 11 LGRA 22; 31 ALJR 830 (involving whether use of premises as a restaurant was abandoned at a particular date), and *Nymboida Shire Council v Skar Industries Pty Ltd* (1998) 99 LGERA 178 at 190-191; [1998] NSWLEC 166 (scale of use of a quarry at a particular date).