



**3<sup>rd</sup> lecture in a 5-part lecture series**

Lecture	Topic
1	A quick roadmap for Queensland's planning and other environmental laws – how everything fits together
2	Not black magic: practical tips for statutory interpretation – how to avoid being overwhelmed by complexity
★ 3	<b>Navigating planning schemes – a helpful overview of where to look for what you need to know in a planning scheme</b>
4	Development assessment – understanding the various stages of development assessment
5	Practical tips for taking action to protect the environment in court – what to know about your rights to go to court on planning matters

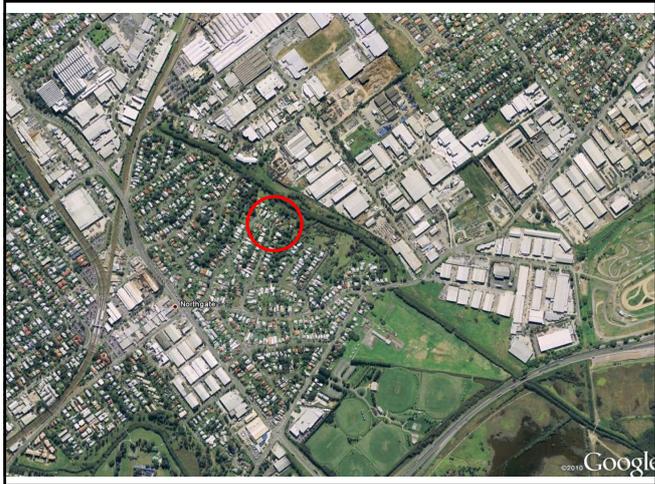
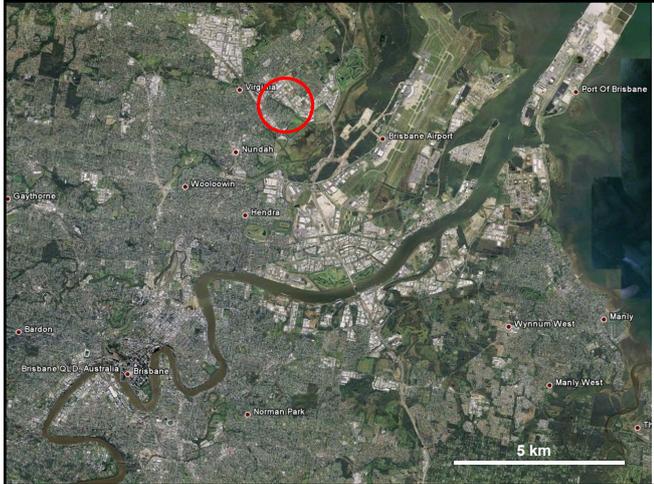
- Lecture 3 outline**
1. Our problem: Tornabene development application
  2. Does the proposed development comply with the law and, if not, what steps need to be taken to either: stop it; or make it comply?
    - What laws regulate this activity?
      - Where do I find the law?
      - How do I interpret the law?
    - Are any applications needed to gain government approval?
      - Planning Act 2016 (Qld)
    - Are those applications likely to be granted?
      - Does the application comply with relevant planning instruments, especially any relevant regional plan and planning scheme?
      - How do I interpret a planning scheme?

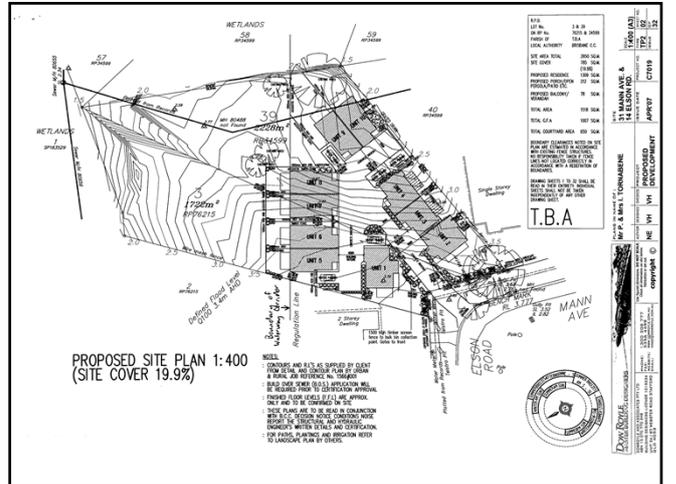
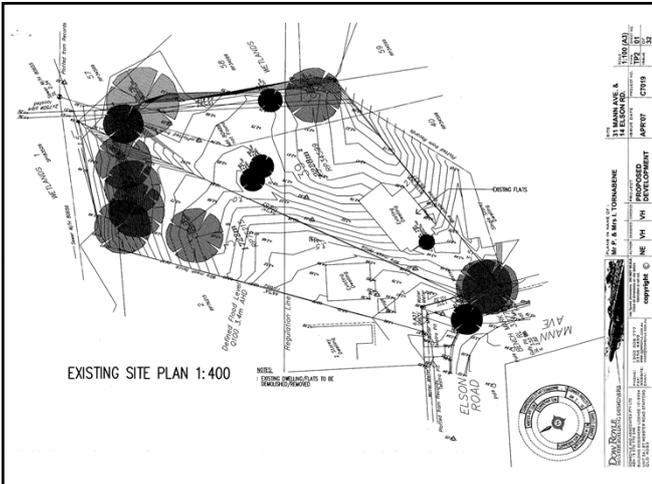
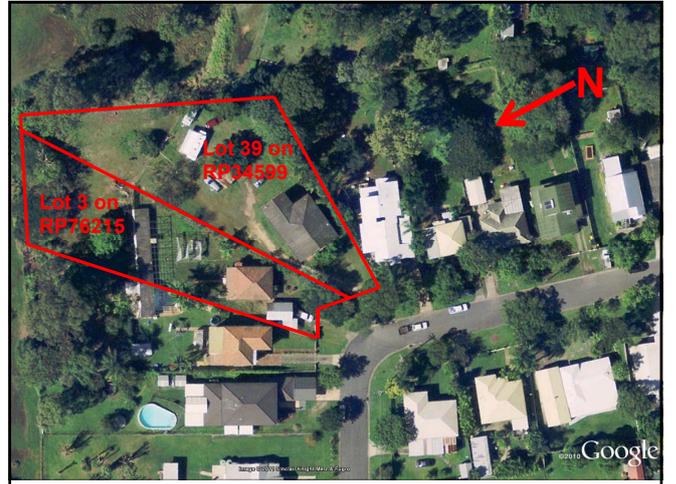
**Our problem: can 10 units be built on land at Northgate?**

CORNER MANN AVE. & ELSON RD. (STREET ELEVATION N.T.S)

(We act for the developer, Peter Tornabene)  
(This is deliberately a simple, common development)

**Website:** <http://envlaw.com.au/tornabene-appeal/>







## Major land tenures in Queensland:

**Private (freehold) Land (17% of Qld)**

**Crown Land (83% of Qld)**

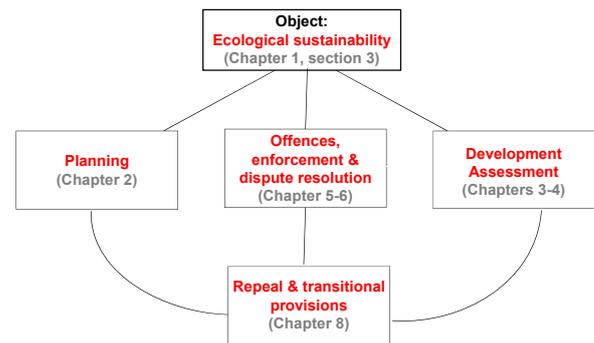
- Leasehold land (78%)
- Reserves for protected areas (4.6%)
- State forests (2.5%)
- Other State land (e.g. roads) (<1%)



## Planning Act 2016 (Qld)

Chapter	Section	Page
Chapter 1 Preliminary	1.1 Purpose of Act	17
	1.2 Object of Act	17
	1.3 Short title	17
	1.4 Commencement	17
Chapter 2 Planning	2.1 Introduction	20
	2.2 Object of Chapter	20
Chapter 3 Development assessment	3.1 Types of development and assessment	27
	3.2 Assessment process	27
Chapter 4 Planning instruments	4.1 What are planning instruments	33
	4.2 How are planning instruments made	33
Chapter 5 Planning instruments and designations have effect	5.1 What are planning instruments	33
	5.2 How are planning instruments made	33
Chapter 6 Offences, enforcement and dispute resolution	6.1 Offences	40
	6.2 Enforcement and dispute resolution	40
Chapter 7 Development assessment	7.1 Types of development and assessment	47
	7.2 Assessment process	47
Chapter 8 Repeal and transitional provisions	8.1 Repeal of laws	50
	8.2 Transitional provisions	50

## Conceptual structure of the Planning Act 2016 (Qld)

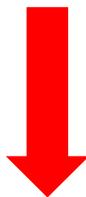


**There are several layers of planning in Queensland and other Australian States that in turn affect application requirements:**

**Statewide**

**Regional**

**Local**



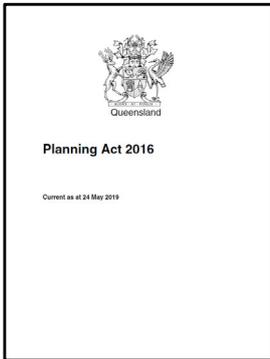
**Decreasing geographic area of application but dramatically increasing levels of detail & specificity.**

There is a wide range of approaches to environmental laws and plans.

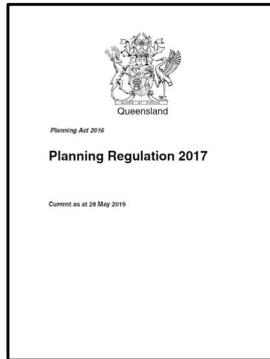
Increasingly prescriptive and detailed laws and plans have the advantage of giving certainty to landholders and government but the disadvantage of being long and complex.

Shorter, less prescriptive laws and plans tend to be very vague and uncertain in their operation, often depending to a large extent on the discretion of the government decision-maker (e.g. contrast EPBC Act vs planning schemes under SPA in high pressure areas such as Brisbane).

Queensland's planning system has multiple layers comprised of many large, complex and related documents.



(341 pages)

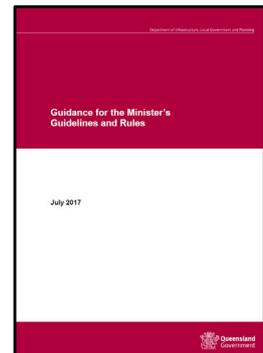


(475 pages; 24 Schedules)

The process for local government plan making is set out in the *Minister's Guidelines and Rules 2017*



(88 pages)



(77 pages)

The *State Planning Policy 2017* provides for state interests to be incorporated into regional plans & local government planning schemes.

See: <https://planning.dsdmip.qld.gov.au/planning/spa-system/plan-making-under-spa/state-planning-under-spa/state-planning-policy>



Development Assessment follows Ch 3 (ss43-109) of the *Planning Act* & the DA Rules



See Ch 3 (Development Assessment), ss 43-109, especially:

- s 45 (definitions of code & impact assessment);
- s 60 (Deciding development applications)

See also: Ch 8 (Transitional provisions), s239 – references to old terms "exempt development" and "self-assessable development".



(38 pages)

State Government development assessment triggers are prescribed in the *Planning Regulations 2017* (Qld) and, if triggered, assessed through the Single Assessment & Referral Agency (SARA) against the State Development Assessment Provisions.



(475 pages; 24 Schedules)



(261 pages)

Regional plans prescribe an "urban footprint" and some other matters at a regional level



(192 pages)



## Local government planning schemes provide the bulk of detailed development controls (e.g. Brisbane City Plan 2014 – >1,000pp?)



- Part 1 About the planning scheme
- Part 2 State planning provisions
- Part 3 Strategic framework
- Part 4 Local government infrastructure plan
- Part 5 Tables of assessment
- Part 6 Zones
- Part 7 Neighbourhood plans
- Part 8 Overlays
- Part 9 Development codes
- Part 10 Other plans
- Schedule 1 Definitions
- Schedule 2 Mapping
- Schedule 3 Local government infrastructure plan mapping and tables
- Schedule 4 Notations required under the Planning Act 2016
- Schedule 5 Designation of premises for development
- Schedule 6 Planning scheme policies (PSP)
- Appendix 1 Index and glossary of abbreviations and acronyms
- Appendix 2 Table of amendments

<http://eplan.brisbane.qld.gov.au/>

## Key transitional terminology (s289 Planning Act)

Column 1 Old name	Column 2 New name
exempt development	accepted development
self-assessable development	to the extent the development complies with all applicable codes for the self-assessable development—accepted development
self-assessable development	to the extent the development does not comply with all applicable codes for the self-assessable development—assessable development
a code, or other matter, against which assessable development, or development requiring compliance assessment, must be assessed	an assessment benchmark
compliance assessment	code assessment

## Useful resources for accessing planning instruments – DSDMIP website

Access planning schemes, maps and regional plans  
Click on the map or select a council.

- Aurukun Shire Council
- Balonne Shire Council
- Banana Shire Council
- Barcaldine Regional Council
- Barron Shire Council
- Blackall-Tambo Regional Council
- Boulia Shire Council
- Brisbane City Council
- Bulloo Shire Council
- Bundaberg Regional Council
- Burdekin Shire Council

<https://planning.dsdmip.qld.gov.au/> - links to local government websites for planning schemes

## Useful resources for accessing planning instruments – DSDMIP website

Queensland Government  
Queensland's Planning System

Our planning system Better planning Better development Regional Planning Instruments Act SPP systems Resources

Maps

The Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) provides mapping that spatially represents matters of state interest in the planning system through two GIS (Geographic Information Systems) platforms: the State Planning Policy Interactive Mapping System (SPP IMS), which is a standalone mapping system, and the Development Assessment Mapping System (DAMS), which incorporates mapping used for a number of different functions to development assessment.

You can access the SPP IMS and DAMS below, or navigate directly to a particular type of mapping:

- DAMS and SPP IMS updates

If you require assistance using DAMS, please review these FAQs, if you still have questions about DAMS, or about SPP IMS, please contact [mappingenquiries@dsdmip.qld.gov.au](mailto:mappingenquiries@dsdmip.qld.gov.au).

**Important message:** It is recommended that you clear your browser cache or press **Ctrl+F5** keys after the mapping application loads to ensure you are viewing the latest version.

<https://planning.dsdmip.qld.gov.au/maps>

## DA Assessment Mapping System

Queensland Government  
Development Assessment Mapping System

Map showing various planning zones and overlays around Brisbane.

- SAVA DA Mapping
- State SAVA DA Mapping
- SPP Assessment Benchmark Mapping
- ASSESSABLE COMMUNITIES
- MINING AND EXTRACTIVE RESOURCES
- WATER QUALITY
- NATURAL HAZARDS RISK AND RESILIENCE
- Other State Planning Matters
- REGIONAL PLANS
- Regional Land Use Categories (RUC) (RUC, MRA, MPA)
- Other Features
- Special Areas
- Regional Landscape and Rural Production Area
- Regional business centres
- Regional biodiversity value
- Regional significant scenic amenity
- Regional governance network
- Regional (SPP/DA) development area (transport)
- Local Development Area
- Regional Development Area

<https://planning.dsdmip.qld.gov.au/maps>

## SEQ Regional Plan interactive mapping

Map showing SEQ Regional Plan interactive mapping with various zones and overlays.

Search for Lot 3 on RP76215 at  
<http://atlas.information.qld.gov.au/atlas/default.aspx?type=007a>

### SEQ Regional Plan interactive mapping

Search for Lot 0 on SP244256 (new balance lot of subdivided Lot 3 on RP76215) on <http://www.dilqp.qld.gov.au/planning/development-assessment/da-mapping-system.html> (previously <http://gsatial.information.qld.gov.au/ReqPlan/>)

### SEQ Regional Plan interactive mapping

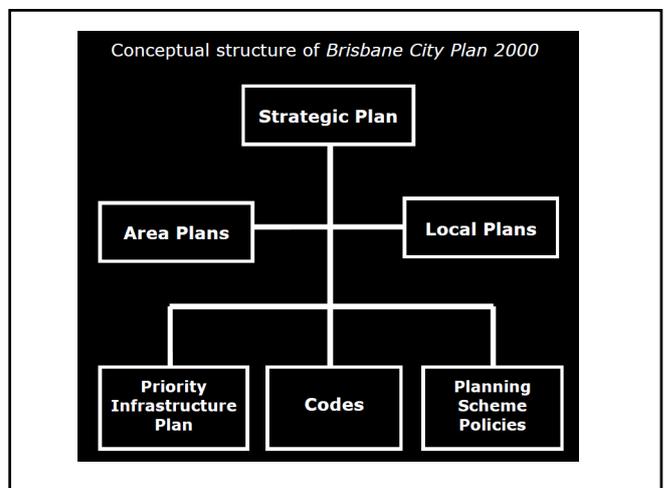
Search for Lot 0 on SP244256 (new balance lot of subdivided Lot 3 on RP76215) on <http://www.dilqp.qld.gov.au/planning/development-assessment/da-mapping-system.html> (previously <http://gsatial.information.qld.gov.au/ReqPlan/>)

While State and regional planning is important, **local government planning schemes provide the bulk of laws and regulations restricting land development in Queensland and other Australian States**

Planning schemes are statutory instruments created under the *Planning Act* 2016 (Qld). They are interpreted according to ordinary rules of statutory interpretation (with an emphasis on not taking an overly technical or pedantic approach).

### Planning Schemes: Brisbane City Plan 2000

<http://pdonline.brisbane.qld.gov.au/MasterView/masterplan/enquirer/default.aspx>



## Brisbane City Plan 2014

<http://eplan.brisbane.qld.gov.au/>

## Planning schemes are laws and you interpret them in the same basic way.

[see handout]

### Core skills for statutory interpretation by non-lawyers in Queensland

Handout for EDO planning workshop - 19 June 2019

By Dr Chris McGrath, Barrister, 19 June 2019

#### THREE BASIC STEPS

The following three steps will resolve 95% of problems involving the interpretation of Acts of Parliament (normally called statutes or legislation), regulations (subordinate legislation), planning schemes and conditions of approval in Queensland. For simplicity here legislation, regulations, planning schemes and approvals are referred to as "statutes".

#### 1. Find the statute in force at the time relevant to your problem and any related document.

Normally, this will be the current version of a statute but if your problem involves something that occurred in the past the statute in force at that time may apply. Legislation starts as a Bill before Parliament. It may be amended many times before being repealed. Ensuring you have the version in force at the time relevant to your problem is a vital first step. If a statute was recently enacted, pay particular attention for transitional arrangements that link to any previous statute.

All relevant documents need to be obtained. For example, in problems involving a planning issue, the relevant planning legislation, regulations, planning scheme and any development application or approval will normally be required.

Legislation and subordinate legislation should be obtained from the official website of the government that created it (e.g. Federal Register of Legislation for Commonwealth legislation and the OQP website for Queensland legislation). You can check the history of the statute there too.

The Austral website also covers all Australian legislation and regulations but the official government websites such as OQP are preferable. Planning schemes are now commonly available on local government websites.

#### 2. If you are unfamiliar with the statute, skim-read it and any related documents and identify the parts relevant to your problem.

Modern statutes are often long and complex in their structure and it is important not to get bogged down in long parts that are not relevant to your problem. You might find it useful in this step to read the table of contents and note the chapter headings in a list on a single page so that you can see a simplified structure of the whole statute.

#### 3. Interpret the parts of the statute and related documents relevant to your problem according to their plain meaning, having regard to the objects of the statute and the context.

Pay particular attention to terms defined in a statute (normally found in a schedule called "dictionary" or "definitions"). Some common terms are also defined in the Acts Interpretation Act 1954 (Qld) (AIA) for each jurisdiction. For example, in common with other jurisdictions, in Queensland the AIA defines "person" to include corporations. You may need to follow definitions

Planning schemes are always a combination of maps and text.

They can be very long and complex (e.g. in Brisbane).

The main key to using them to determine what development can occur on a particular parcel of land and how it will be assessed is use the maps to identify what the land you are considering is designated as under the planning scheme (e.g. its area/zone classification and whether any local plans or other layers of planning apply to it).

Once you have found that information in the maps, you need to read the parts of the text relevant to those designations. The text will provide you will detail on the constraints applying to that land.

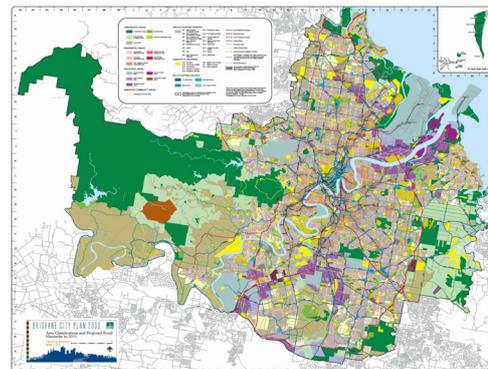
Compare the planning scheme areas with the aerial photograph of the land



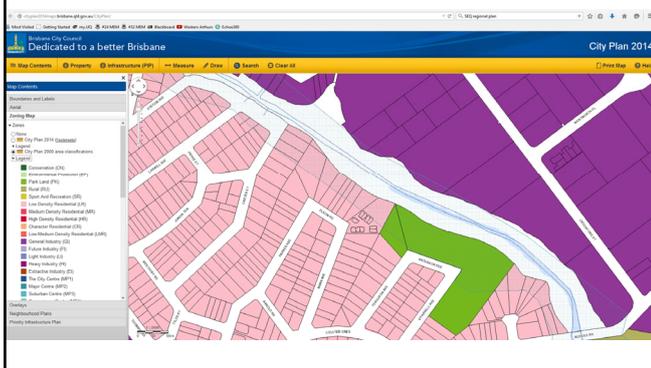
Key for area classifications and other map layers

Conservation	Low-Medium Density Residential Area
Character Residential	Low Density Residential Area
Community Use Area	Multi Purpose Centre City Centre MP1
Emerging Community Area	Multi Purpose Centre Major Centre MP2
Extractive Industry Area	Multi Purpose Centre Suburban Centre MP3
Environmental Protection Area	Multi Purpose Centre Convenience Centre MP4
Future Industry Area	Medium Density Residential Area
General Industry Area	Park Land Area
Heavy Industry Area	Rural Area
High Density Residential Area	Special Purpose Centre
Investigation Area	Sport and Recreation Area
Light Industry Area	Waterways

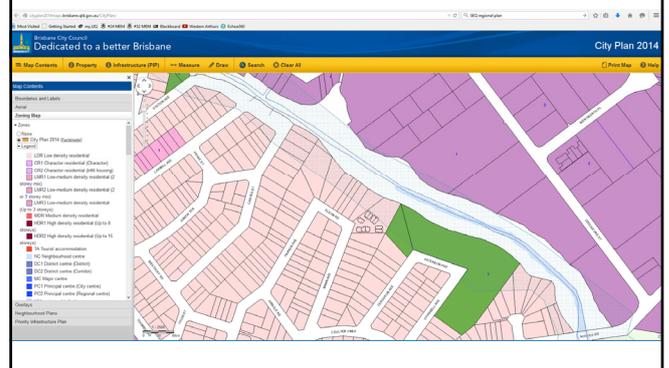
## Planning Schemes: Brisbane City Plan 2000



# PD online results for Tornabene ppty (Superseded) Brisbane City Plan 2000 – “areas”



# PD online results for Tornabene ppty Brisbane City Plan 2014 – “zones”



## Brisbane City Plan 2014

**Part 1 About the planning scheme**

**1.1 Introduction**

(1) The City Plan (the planning scheme) has been prepared in accordance with the *Sustainable Planning Act 2009 (the SP Act)* as a framework for managing development in a way that advances the purpose of *the SP Act*.

(2) The planning scheme was amended for alignment with the *Planning Act 2016 (the Act)* pursuant to the Minister's rules under section 260 of *the Act* on 30 May 2017.

(3) In seeking to achieve this purpose, the planning scheme sets out the Brisbane City Council's intention for the future development in the planning scheme area, over the next 20 years.

(4) The planning scheme seeks to advance state and regional policies, through more detailed local responses, taking into account the local context.

(5) While the planning scheme has been prepared with a 20 year horizon, it will be reviewed periodically in accordance with *the Act* to ensure that it responds appropriately to the changes of the community at all local, regional and state level.

(6) The planning scheme applies to the planning scheme area of the Brisbane City Council including all premises, roads, internal waterways and tidal areas and interests with the surrounding local government areas (illustrated in *Map 1*).

Editor's note—The planning scheme has been amended to align with the regulated requirements as provided in *the Act*. In accordance with section 163 of *the Act*, the regulated requirements apply instead of the planning scheme, to the extent of any inconsistency.

## Key transitional terminology (s289 Planning Act)

Column 1 Old name	Column 2 New name
exempt development	accepted development
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self-assessable development	to the extent the development does not comply with all applicable codes for the self-assessable development—assessable development
a code, or other matter, against which assessable development, or development requiring compliance assessment, must be assessed	an assessment benchmark
compliance assessment	code assessment

## Brisbane City Plan 2014 – “zones”

**6.2 Zone codes**

**6.2.1 Residential zones category**

**6.2.1.1 Low density residential zone code**

(1) The purpose of the low density residential zone is to provide for:

(a) a variety of low density dwelling types, including *dwelling houses*; and

(b) *community uses*, and small-scale services, facilities and infrastructure, to support local residents.

(2) The purpose of the zone will be achieved through overall outcomes for:

(a) zone role;

(b) development location and uses;

(c) development form.

(3) Zone role overall outcomes are:

(a) Development in the zone supports the implementation of the policy decision set in the Strategic framework, in particular:

(i) *Theme 2: Brisbane's Outstanding Style: Element 2.1 - Brisbane's identity and Element 2.2 - Brisbane's housing and accommodation choices*

(ii) *Theme 5: Brisbane's Character and Element 5.5 - Brisbane's Suburban Living Avenues*

(4) Development location and uses overall outcomes are:

(a) Development provides for suburban living in *dwelling houses* of predominantly 1 or 2 *storeys* in height, on appropriately sized and configured vacant lots, which maintain the low density detached housing suburban identity of the *low density residential zone*.

(b) Development provides for other housing types at a house scale to provide housing diversity offering choice to different *household* types and individuals to suit residents through different life-cycle stages.

(c) Development, other than a *dwelling house*, including dual occupancy or a *multiple dwelling* is not accommodated within this suburban setting unless on a well-located *site* of over 3,000m<sup>2</sup>.

(d) Development for other housing types, being a *residential care facility* or *retirement facility*, together with ancillary convenience activities and allied services (*care co-located uses*), which provide housing diversity and enable people to remain within their local neighbourhood throughout their life cycle, may be accommodated at appropriate locations where development meets the *bulk and quality best* requirements of the *retirement and residential care facility code*.

<http://eplan.brisbane.qld.gov.au/>

## Brisbane City Plan 2014

**5.5 Categories of development and assessment—Material change of use**

The following tables identify the categories of development and assessment for development in a zone for making a material change of use.

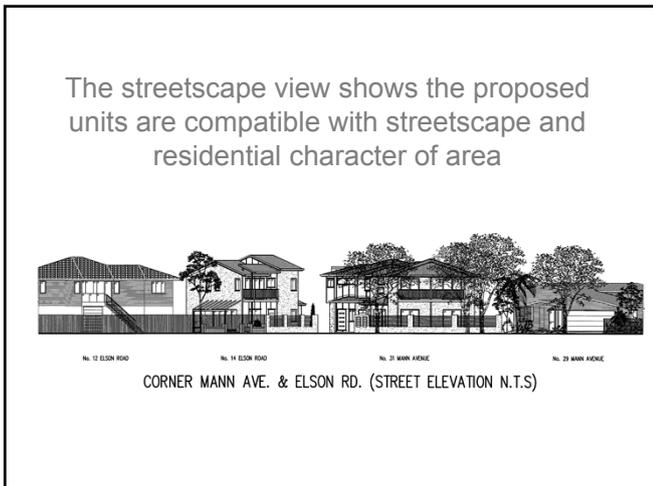
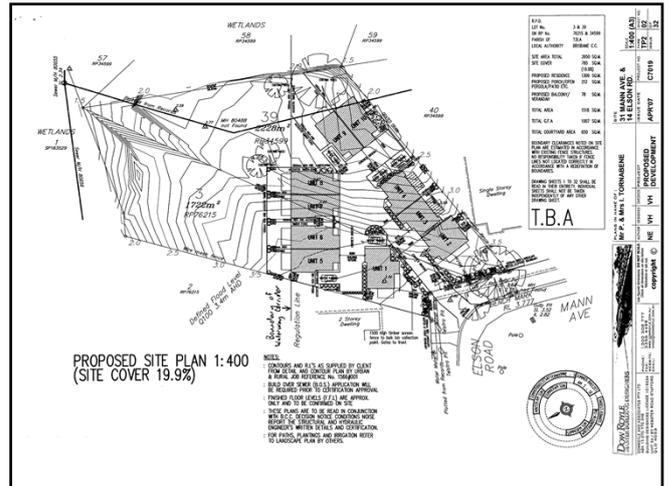
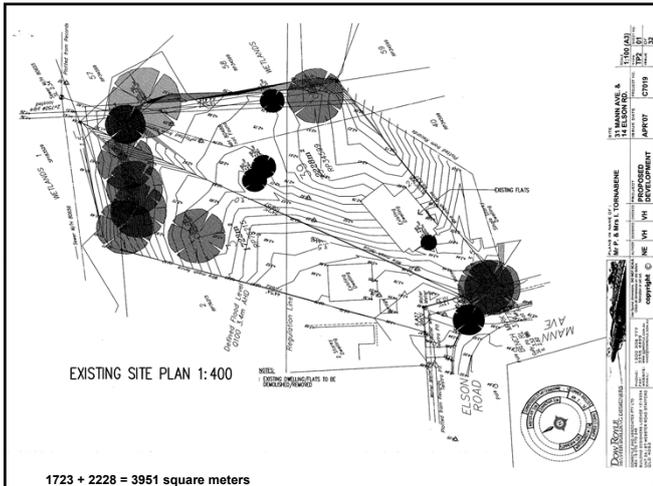
**Residential zones category**

**Table 5.5.1—Low density residential zone**

Use	Categories of development and assessment	Assessment benchmarks
Any prescribed accepted development	Accepted development	Not applicable
Careaker's accommodation	Development approval is not required If complying with all acceptable outcomes in the <i>Careaker's accommodation code</i>	Not applicable
Care co-located uses (activity group)	Assessable development—Code assessment If not complying with all acceptable outcomes in the <i>Careaker's accommodation code</i>	<i>Retirement and residential care facility code</i> <i>Low density residential zone code</i> <i>Prescribed secondary code</i>
Dwelling house	Accepted development If identified in schedule 6, part 2 of the <i>Regulation</i>	Not applicable

Note—Where an overlay applies, a dwelling house may become assessable development. Refer to section 5.10.

<http://eplan.brisbane.qld.gov.au/>



### What is the test for approval of development applications?

- See ss 45 & 60 of the *Planning Act 2016* (Qld) for the test for approvals.
- A useful reference is *Ashvan Investments Unit Trust v Brisbane City Council & Ors* [2019] QPEC 16 at [35]-[86] (Williamson QC DCJ) <https://www.sclqld.org.au/caselaw/QPEC/2019/16>

**If a proposed development is consistent with the planning scheme & other planning instruments, it is likely to be approved.**

(Nb. Code assessable development *must be* approved to the extent the development complies with all of the assessment benchmarks for the development).

If a proposed development is not consistent with the planning scheme & other planning instruments, it is likely to be refused unless there are sufficient “relevant matters” (e.g. planning need) to justify it.

Ultimately, the greater the inconsistency, the harder it is to get approval.

See the discussion in *Ashvan Investments Unit Trust v Brisbane City Council & Ors* [2019] QPEC 16 at [35]-[86] (Williamson QC DCJ) <https://www.sclqld.org.au/caselaw/QPEC/2019/16>

**So, to answer our problem, does the proposed development comply with the law and, if not, what steps need to be taken to make it comply?**



CORNER MANN AVE. & ELSON RD. (STREET ELEVATION N.T.S)

## Streetview – November 2013



## Lecture 2 outline

1. Today's problem: Tornabene development application
2. Does the proposed development comply with the law and, if not, what steps need to be taken to make it comply?
  - What laws regulate this activity?
    - Where do I find the law?
    - How do I interpret the law?
  - Are any applications needed to gain government approval?
    - Planning Act 2016 (Qld)
  - Are those applications likely to be granted?
    - Does the application comply with relevant planning instruments, especially any relevant regional plan and planning scheme?
    - How do I interpret a planning scheme?

## Take home points:

1. Planning schemes provide the majority of detailed controls on land development and they are comprised of maps and text that you need to read together.
2. If a proposed development is consistent with the planning scheme & other planning instruments, it is likely to be approved.
3. If a proposed development is not consistent with the planning scheme & other planning instruments, it is likely to be refused unless there are sufficient "relevant matters" (e.g. planning need) to justify it.
4. Ultimately, the greater the inconsistency, the harder it is to get approval.