

# Slides for ENVM3103 & ENVM7123 lecture 3 on 9 March 2020

## Navigating the development assessment system in Queensland

Regulatory Frameworks for Environmental Management & Planning (ENVM3103/7123)  
The University of Queensland, Brisbane, Queensland  
Lecture 3, semester 1, 9 March 2020 - Dr Chris McGrath

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### Course outline

Lecture	Topic
1	Introduction
2	Planning schemes
★ 3	Development assessment (DA)
4	Conditions & development offences
5	Mining & EIA
6	CSG, ports & major infrastructure projects
7	Environmental harm & pollution
8	Nature conservation & vegetation management
9	Water management, fisheries & cultural heritage
10	EPBC Act
11	Climate change
12	Professional duties, ethics & courts
13	Future directions & exam review

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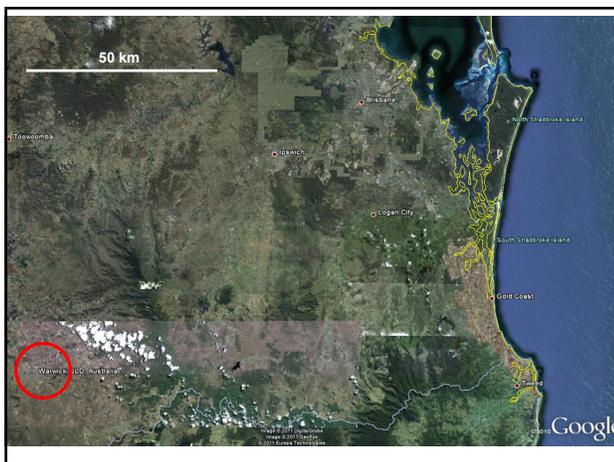
### Lecture 3 outline

- Today's problem: Plumb's Chambers demolition for shopping centre
- 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?
  - Are any applications needed to gain government approval?
    - How is the proposal assessed under the *Planning Act 2016*?
      - Step 1: 3 preliminary questions
      - Step 2: DA process (application part, etc)
  - Is a development application likely to be granted?
    - Does the application comply with relevant planning instruments, especially the planning scheme?

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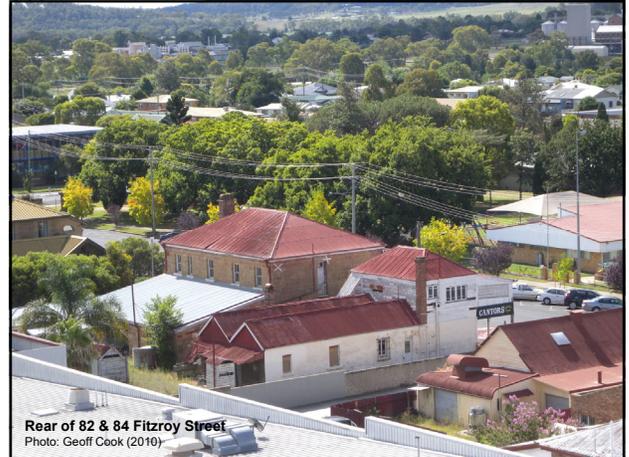
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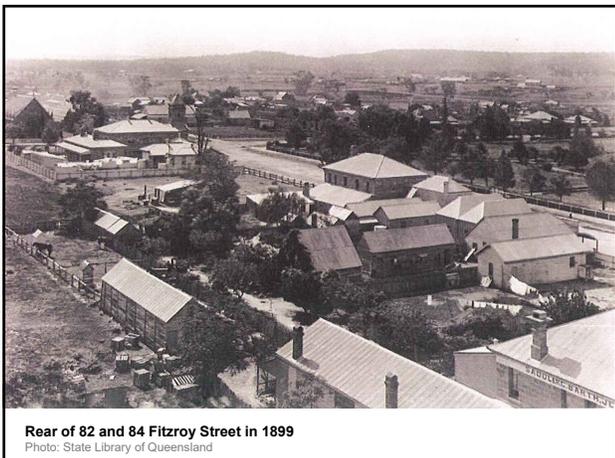
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82 and 84 Fitzroy Street (collectively Plumb's Chambers) are\* both entered on the Queensland Heritage Register under the *Queensland Heritage Act 1992* (Qld) due to their historic significance

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Registers and inventories | Queensland Heritage Register | Guide to entering houses in the Queensland Heritage Register | Getting on the register | How listing affects you

**Plumb's Chambers**

Place Details	
Place ID	601725
Place Name	Plumb's Chambers
Alternative Name	Medical Hall
Place Classification	Built
Place Category	Retail, Wholesale, Services
Place Type	Shop house/s
Place Commonwealth	Shop/s

Heritage Search Options: Basic Search, Map-based Search, Advanced Search, Text Results, Version, Produce Map

(Assumed for this problem. Both were listed from 1997-2014. After its demolition in 2014, 82 Fitzroy Street was removed from the Queensland Heritage List: <https://apps.des.qld.gov.au/heritage-register/detail/?id=601725#>)

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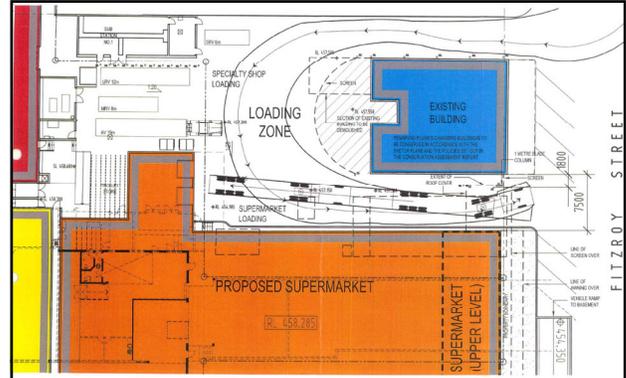
84 Fitzroy Street is also listed on the local heritage register but, by mistake, 82 Fitzroy Street was not listed.



PLANNING SCHEME POLICY No. 1  
CULTURAL HERITAGE

NUMBER	PLACE	ADDRESS	LOCALITY	RPD
53	Warwick Court House	88 Fitzroy Street	Warwick	Lot 14 CP887284
54	Leslie Park war memorials, gates on Fitzroy/Palmerin St corner, bandstands, Megan memorials, original paintings on Carlton Street	Fitzroy Street	Warwick	Lot 0 V030106
55	Plumb's Chambers	84 Fitzroy Street	Warwick	Lot 1 6P94676
56	Warwick Police Station, Former Lock-Up Keeper's Residence, Lock-Up, Former Acting Sergeant's Residence, Service Building	86 Fitzroy Street	Warwick	Lot 15 CP90800

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We act for the owner who wishes to demolish 82 Fitzroy Street and the rear section of 84 Fitzroy Street to extend the neighbouring supermarket (owned by our client)

NOVEMBER 2008  
SCALE 1:200 @ A3

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Daily News

HOME NEWS SPORT BUSINESS ENTERTAINMENT LIFESTYLE WHAT'S ON PHOTOS PROPERTY

'Urgent work' yet to start on wall

25th January 2012 2:00 AM

Tags: construction, moonaghty group, plumb's chambers' building, safety, warwick

STEEL scaffolding needed to support the crumbling wall of one of the two Plumb's Chambers buildings on Fitzroy St is still not in place more than eight months after safety concerns were first raised.

The controversial site remains cordoned off awaiting what were described last April as "urgent" safety works and stands in the way of a planned expansion of Rose City Shoppingworld.

The Warwick police were the first to ring the alarm bell over the western wall of the sandstone Plumb's building at 84 Fitzroy St which is nearest the station and Haig Ave, which gives access to the underground Rose City Shoppingworld car park.

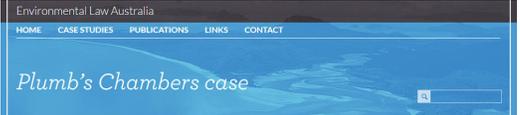


Strategy: let the buildings deteriorate and become a safety hazard

<http://www.warwickdailynews.com.au/story/2012/01/25/urgent-work-yet-to-start-on-wall/>

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Case study of Plumb's Chambers appeal



This case involved an appeal in the Queensland Planning and Environment Court to protect two cultural heritage listed buildings known as "Plumb's Chambers" in Warwick.

Plumb's Chambers at 82 and 84 Fitzroy Street, Warwick, comprise a brick and timber building possibly dating to the 1860s and an 1874-75 stone building. A satellite image of the location of the buildings is available here.

The buildings were listed on the Queensland Heritage Register in 1997 under the Queensland Heritage Act 1992 (Qld) because of, amongst other things, their importance in illustrating the transformation of Warwick in the late 1860s and 1870s from a squatters' town to the principal urban centre of Queensland's most prosperous



<http://envlaw.com.au/plumbs-chambers-case/>

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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?
- Are any applications needed to gain government approval?
  - How is the proposal assessed under the Planning Act 2016 (Qld)?
- Is a development application likely to be granted?
  - Does the application comply with relevant planning instruments, especially the planning scheme?
- What conditions can be imposed on the approval?

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How do I interpret the law?

[see handout]

Handout for ENV0103/7123 lecture 2, 2012  
Core skills for statutory interpretation by non-lawyers in Queensland  
By Dr Chris McGrath – 2 March 2010

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 approvals 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 OQPC website for Queensland legislation. You can check the history of the statute there too. The Austlii website also covers all Australian legislation and regulations but the official government websites such as OQPC 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 the statute (normally found in a schedule called "dictionary" or "definitions"). Some common terms are also defined in the *Acts Interpretation Act 1954* (Qld) (AIA).

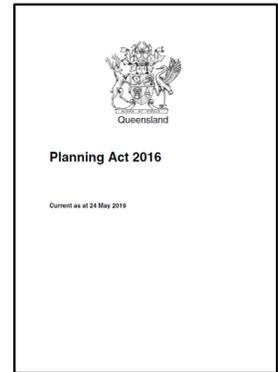
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## What laws regulate this activity?

- 163 Carrying out assessable development without permit
- (1) A person must not carry out assessable development, unless all necessary development permits are in effect for the development.

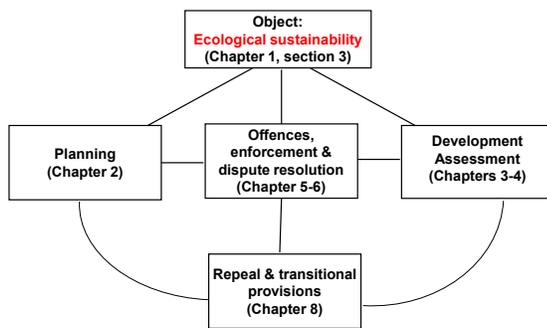
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## Are any applications needed to gain government approval?



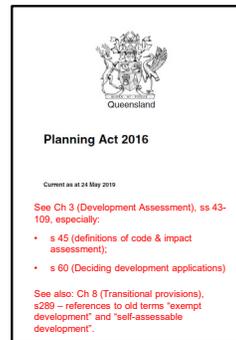
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### Conceptual structure of the Planning Act 2016 (Qld)



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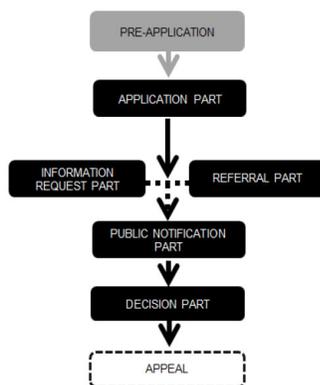
### Development Assessment follows Ch 3 (ss43-109) of the Planning Act & the DA Rules



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Government publications normally describe DA system as starting with a pre-application meeting (with government) or the application.

See: <https://planning.dsdmip.qld.gov.au/planning/better-development/>



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But there are a number of key preliminary questions before you know whether you even need to apply and, if so, what parts are relevant:

1. Is it "development"?
2. What category of development is it?
  - Acceptable Development
  - Assessable Development
    - Code Assessment
    - Impact Assessment
  - Prohibited Development
3. What levels of government are involved in the application process?

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I suggest thinking of the DA system in 2 big steps:

1. Preliminary questions
2. DA process

[See handout]

**Flowchart for the development assessment (DA) system under the Planning Act 2016 (Qld)**

STEP 1 – PRELIMINARY QUESTIONS

1. Does the proposal involve “development”? (see the definition of “development” in Sch 2 (Dictionary) of the Planning Act 2016 (Qld) (PA) – 5 types:

- building work
- plumbing or drainage work
- operational work
- reconfiguring a lot (RAL), and
- material change of use (MCU)

2. What category of development is it? (see the PA, ss 44 & 45, Planning Regulations 2017, Sch 6, 7, 9, 10, 12, 13, 18, 19, 20 & 21 for State level assessable development, **plus** the relevant local government planning scheme for assessable development at a local government level)

ACCEPTED DEVELOPMENT  
↓  
DEVELOPMENT APPROVAL IS NOT REQUIRED

ASSESSABLE DEVELOPMENT  
Code assessment / Impact assessment  
↓  
DEVELOPMENT APPROVAL IS REQUIRED

PROHIBITED DEVELOPMENT  
↓  
DEVELOPMENT IS PROHIBITED

3. Which levels of government are involved in the assessment process?

- Who is the assessment manager listed in Sch 8 of the Planning Regulations 2017 (Qld)?
- Is there any referral agency listed in Sch 10 or elsewhere in the Planning Regulations 2017 (Qld)?

STEP 2 – DETERMINE THE PARTS OF THE DEVELOPMENT ASSESSMENT SYSTEM THAT APPLY (See Ch 3 of the Planning Act 2016 (Qld), plus the Development Assessment Rules made under s 68)

PRE-APPLICATOR

↓

APPLICATION PART

↓

INFORMATION RECEIVED

↓

REFERRAL PART

↓

DEVELOPMENT PART

↓

APPROVAL

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**Step 1 – Answer 3 preliminary questions**

**STEP 1 – PRELIMINARY QUESTIONS**

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3. Which levels of government are involved in the assessment process?

- Who is the assessment manager listed in Sch 8 of the Planning Regulations 2017 (Qld)?
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1. Does the proposal involve “development” (see Sch 2 (Dictionary) of the Planning Act 2016 (Qld))

*development* means—

- carrying out—
  - building work; or
  - plumbing or drainage work; or
  - operational work; or
- reconfiguring a lot; or
- making a material change of use of premises.

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1. Does the proposal involve “development” (see Sch 2 (Dictionary) of the Planning Act 2016 (Qld))

**“building work”**

*building work*—

- means—
  - building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure; or

*Example—*

building a retaining wall
- works regulated under the building assessment provisions; or
- excavating or filling for, or incidental to, the activities stated in subparagraph (i); or

28

1. Does the proposal involve “development” (see Sch 2 (Dictionary) of the Planning Act 2016 (Qld))

**Nb. “work” definition is unhelpful**

*works* includes building work, operational work, plumbing work and drainage work.

29

1. Does the proposal involve “development” (see Sch 2 (Dictionary) of the Planning Act 2016 (Qld))

**“plumbing work”**

*plumbing work* see the *Plumbing and Drainage Act 2018*, schedule 1.

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## 1. Does the proposal involve “development”

(see Sch 1 (Dictionary) of the *Plumbing & Drainage Act 2018* (Qld))

*plumbing* means—

- (a) an apparatus, fitting or pipe for—
  - (i) supplying water to premises from a water service provider’s infrastructure or a water storage tank; or
  - (ii) carrying water within premises; or
- (b) an apparatus, fitting, fixture or pipe, above ground level, that carries sewage on premises to drainage; or
- (c) a greywater treatment plant or greywater diversion device.

*drainage work* includes installing, changing, extending, disconnecting, taking away and maintaining—

- (a) drainage; or
- (b) a greywater use facility; or
- (c) an on-site sewage facility.

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## 1. Does the proposal involve “development”

(see Sch 2 (Dictionary) of the *Planning Act 2016* (Qld))

“operational work”

*operational work* means work, other than building work or plumbing or drainage work, in, on, over or under premises that materially affects premises or the use of premises.

Again, this is not particularly helpful.

In practice, common forms of operational work are:

- excavating or filling land
- clearing vegetation or marine plants
- roadworks

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## 1. Does the proposal involve “development”

(see Sch 2 (Dictionary) of the *Planning Act 2016* (Qld))

“reconfiguration of a lot” (ROL)

*reconfiguring a lot* means—

- (a) creating lots by subdividing another lot; or
- (b) amalgamating 2 or more lots; or
- (c) rearranging the boundaries of a lot by registering a plan of subdivision under the Land Act or Land Title Act; or
- (d) dividing land into parts by agreement rendering different parts of a lot immediately available for separate disposition or separate occupation, other than by an agreement that is—
  - (i) a lease for a term, including renewal options, not exceeding 10 years; or
  - (ii) an agreement for the exclusive use of part of the common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*; or
- (e) creating an easement giving access to a lot from a constructed road.

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## 1. Does the proposal involve “development”

(see Sch 2 (Dictionary) of the *Planning Act 2016* (Qld))

“material change of use” (MCU)

*material change of use*, of premises, means any of the following that a regulation made under section 284(2)(a) does not prescribe to be minor change of use—

- (a) the start of a new use of the premises;
- (b) the re-establishment on the premises of a use that has been abandoned;
- (c) a material increase in the intensity or scale of the use of the premises.

...

*use*, for premises, includes an ancillary use of the premises.

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(My own) proposed amendment to SPA & the *Planning Bill 2015* to insert a definition of “use” consistent with its technical meaning.

*use*, for premises—

- (a) means the purpose for which the premises is used as understood in ordinary terminology and a town planning context; and

*Examples for paragraph (a)—*

restaurant, hotel, dwelling house, shopping centre, park

- (b) may be further defined by a relevant planning instrument; and

- (c) includes any ancillary use of the premises.

*Example for paragraph (c)—*

a car park for a shopping centre.

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## Explanation of the concept of “use”

[see handout]

Handout for ENV/M3103 and ENV/M7123 lecture 3, Sem 1, 2020 – 9 March 2020

### Understanding the concept of “use” in town planning and the *Planning Act 2016* (Qld)

The concept of a “use” of land is not defined in the *Planning Act 2016* (Qld)<sup>2</sup> but is central to the operation of the Act through concepts such as the protection of “existing lawful uses” and the major category of development, “material change of use”. It has an important technical meaning in a town planning context that has been explained in past court decisions.<sup>3</sup>

...

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.

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In summary, the concept of “development” and its components (e.g. “use”, MCU, ROL, Op Works, etc) are critical to understand to work in the planning & development sector in Queensland.

You need to know these concepts “off the top of your head” at least in general terms to work in the DA system and read a planning scheme, etc.

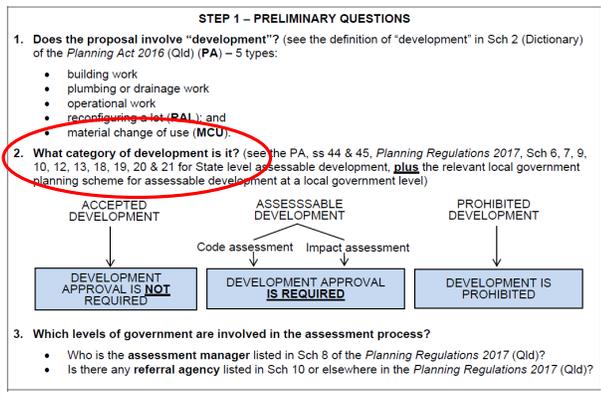
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The broad definition of “development” simply creates a wide umbrella under which virtually any activity affecting land can be regulated.

However, to know whether approval is required, you need to consider whether the “development” being considered triggers any approval requirements at a State or local level.

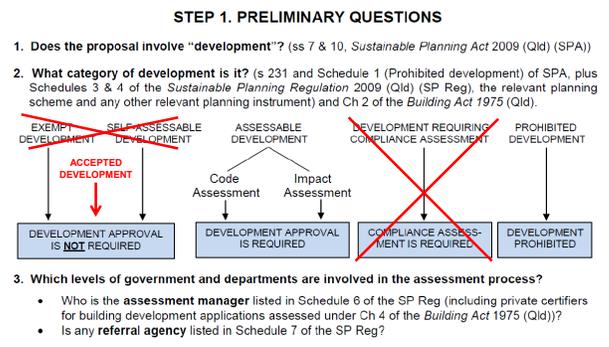
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Step 1 – Answer 3 preliminary questions



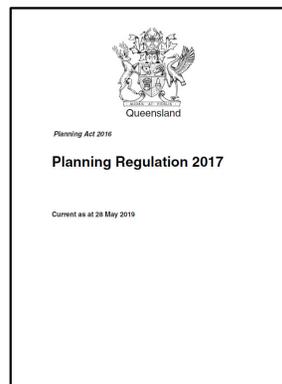
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Note: (largely semantic) changes to preliminary questions under *Planning Act 2016* (compared to SPA)



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A. Check the *Planning Regulations 2017* for State-level triggers



(475 pages; 24 Schedules)

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When we check the *Planning Regulations 2017*, we find that development of a “Qld Heritage Place” (a place entered in the Queensland heritage register) is assessable development (code assessable) in Sch 10

Planning Regulation 2017  
Schedule 10

Division 2 Queensland heritage place

Subdivision 1 Assessable development

15 Assessable development—development on or adjoining a Queensland heritage place

(1) Development on a Queensland heritage place is assessable development, unless—

- an exemption certificate under the Heritage Act has been given for the development by the chief executive of the department in which that Act is administered; or
- the development is, under section 78 of that Act, liturgical development; or
- the development is carried out by the State; or
- the development is PDA-related development; or
- the development is carried out for the cross river rail project.

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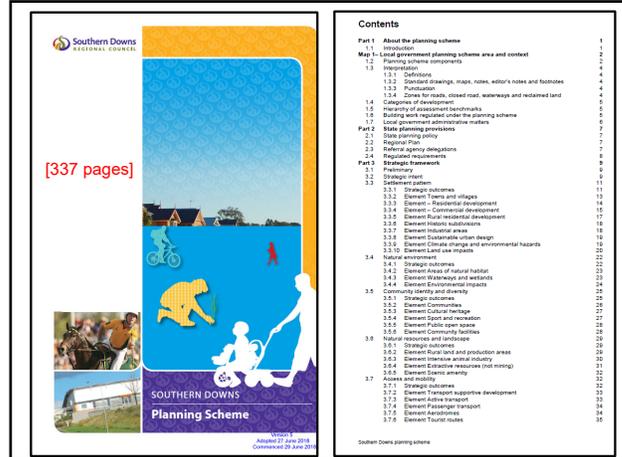
**B. Check the relevant planning scheme for local-level triggers**

e.g. for Warwick, the *Southern Downs Planning Scheme 2012* (updated in 2018 to reflect *Planning Act 2016* (Qld) terminology)



<https://www.sdrc.qld.gov.au/doing-business/planning-development>

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[337 pages]

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**Remember:** planning schemes are always a combination of maps and text. They can be very long and complex (e.g. in Brisbane).

[See week 2 handout]

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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.

[See week 2 handout]

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**Check the maps:**

[We find that Plumps Chambers is in the Principal Centre Zone]



<https://maps.sdrc.qld.gov.au/IntraMaps90/?project=SDRC%20Maps>

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Now that we have found the zoning (and other layers of mapping), we 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.

**E.g. Check the Table of Development for the relevant zone (it will categorise development as assessable or not) & related codes**

[See week 2 handout]

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**5.7 Categories of development and assessment – Building work**

The following table identifies the categories of development and assessment for building work regulated under the planning scheme.

Zone	Categories of development and assessment	Assessment benchmarks for assessable development and requirements for accepted development
Community facilities, District centre, Environmental management and conservation, Industry, Low density residential, Medium density residential, <b>Principal centre</b> , Rural, Specialised centre and Township	<p><b>Accepted development</b></p> <p>All building work except the removal or demolition of a Local heritage place unless the demolition or removal substantially destroys the Local heritage place and demolition is required by Council for public safety.</p> <p><b>Impact assessment</b></p> <p>The removal or demolition of a Local heritage place unless the demolition is performed following a catastrophic event that substantially destroys the Local heritage place and demolition is required by Council for public safety.</p>	<p>Note: Council is a concurrence agency for any application for a building work on a Local heritage place.</p>
Unlisted development (controlled land)	<p><b>Accepted development</b></p> <p>(a) the work is on an existing building and the work is classified in the same way as the existing building under the provisions of the Building Act 1975, and the existing building is assessable and has received a development approval or a code assessment; or</p> <p>(b) the building is on a lot with an area of less than 20 ha, and the building is not for an accommodation facility.</p> <p><b>Impact assessment</b></p> <p>If not accepted development and not code assessment.</p>	<p>The planning scheme including Heritage overlay code</p>

*Southern Downs planning scheme [Soft page 156] Part 5-143*

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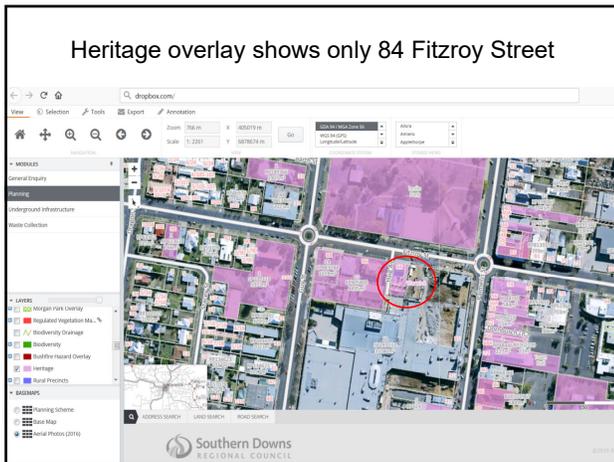
**5.7 Categories of development and assessment – Building work**

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Unlisted development (controlled land)	<p><b>Accepted development</b></p> <p>(a) the work is on an existing building and the work is classified in the same way as the existing building under the provisions of the Building Act 1975, and the existing building is assessable and has received a development approval or a code assessment; or</p> <p>(b) the building is on a lot with an area of less than 20 ha, and the building is not for an accommodation facility.</p> <p><b>Impact assessment</b></p> <p>If not accepted development and not code assessment.</p>	<p>The planning scheme including: Heritage overlay code</p> <p>Southern Downs Planning Scheme [Soft page 156]</p>

*Southern Downs planning scheme [Soft page 245] Part 5-208*

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So, now that we know demolishing Plumbs Chambers is:

At a State level:

- Code assessable for development of on a Queensland Heritage Place

At a local government level:

- Accepted development for any building that is not a Local heritage place (which No. 82 Fitzroy Street is)
- Impact assessable for any building that is a Local heritage place (which 84 Fitzroy Street is), except if demolition required for public safety.

**We can now work out what parts of the DA system apply.**

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**You actually need to check the Regulations & the relevant planning scheme (unless you are already familiar with them) to know whether a proposal for a particular site is code or impact assessable.**

The triggers for assessable development vary from place to place.

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**Step 1 – Answer 3 preliminary questions**

**STEP 1 – PRELIMINARY QUESTIONS**

- Does the proposal involve "development"? (see the definition of "development" in Sch 2 (Dictionary) of the Planning Act 2016 (Qld) (PA) – 5 types:
  - building work
  - plumbing or drainage work
  - operational work
  - reconfiguring a lot (RAL); and
  - material change of use (MCU).
- What category of development is it? (see the PA, ss 44 & 45, Planning Regulations 2017, Sch 6, 7, 9, 10, 12, 13, 18, 19, 20 & 21 for State level assessable development, **plus** the relevant local government planning scheme for assessable development at a local government level)
 

ACCEPTED DEVELOPMENT	ASSESSABLE DEVELOPMENT	PROHIBITED DEVELOPMENT
↓	Code assessment    Impact assessment	↓
DEVELOPMENT APPROVAL IS NOT REQUIRED	DEVELOPMENT APPROVAL IS REQUIRED	DEVELOPMENT IS PROHIBITED
- Which levels of government are involved in the assessment process?
  - Who is the assessment manager listed in Sch 8 of the Planning Regulations 2017 (Qld)?
  - Is there any referral agency listed in Sch 10 or elsewhere in the Planning Regulations 2017 (Qld)?

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If there is any assessable development under a planning scheme, the local government will be the assessment manager.

That is the most common situation, with the State Government being a “referral agency” (through SARA) if there are State level triggers.

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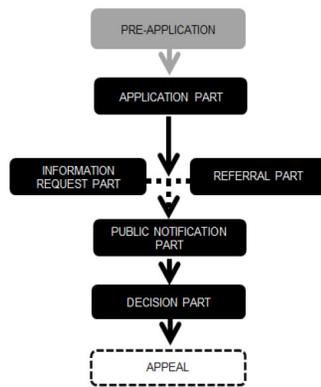
On 1 July 2013 the State Assessment & Referral Agency (SARA) established DSDIP as (virtually) the single state assessment manager & referral agency

The screenshot shows the Queensland Government website with the following content:

- Header: Queensland Government, Queensland's Planning System, Search website, DSDMP website, Subscribe, Contact us, Help.
- Navigation: Our planning system, Better planning, Better development, Regional Planning Interests Act, SPA system, Resources, Online tools and services.
- Breadcrumbs: Home / Better development / The development assessment process / State's role in development assessment.
- Section: State's role in development assessment.
- Text: The state assesses development applications that may affect a state interest, e.g. state heritage places, state transport corridors, and the clearing of certain vegetation. The State Assessment and Referral Agency (SARA) carries out the state's assessment functions on behalf of the chief executive administering the Planning Act (i.e. the Director-General of the Department of State Development, Manufacturing, Infrastructure and Planning), and reviews development proposals against the criteria in the State Development Assessment Provisions (SDAP).
- Section: State Assessment and Referral Agency.
- Text: SARA ensures a coordinated, whole-of-government approach to the state's assessment of development applications. SARA may be either the assessment manager or a referral agency for development applications where the state has a jurisdiction. When SARA is the assessment manager, the application is lodged with SARA.
- Link: <https://planning.dsdmp.qld.gov.au/planning/better-development/the-development-assessment-process/the-states-role>

56

Now that we have answered the preliminary questions, we can work out whether we need to make an application and, if so, what parts of the DA process apply.



57

See the DA Rules for details on the process

The image shows the cover of the 'Development Assessment Rules' document. It includes the title, version (1.2), and a table of contents.

**Development Assessment Rules**  
Under the Planning Act 2016, section 68  
Version 1.2

Effective as at 6 December 2019 – prescribed in the Planning Regulation 2017

**Contents**

- Part 1: Application ..... 2
- Part 2: Referral ..... 4
- Part 3: Information request ..... 6
- Part 4: Public notification ..... 8
- Part 5: Decision ..... 10
- Part 6: Changes to the application and referral agency responses ..... 12
- Part 7: Miscellaneous ..... 14
- Schedule 1: Substantially different development ..... 17
- Schedule 2: Referral agency assessment period ..... 18
- Schedule 3: Public notice requirements ..... 19
  - Part 1 – Public notice requirements for development applications ..... 21
    - 1A - Specifications for public notice on the premises ..... 21
    - 1B - Specifications for public notice in a newspaper and notice to owners of lots adjoining the premises ..... 25
  - Part 2 – Public notice requirements for change applications ..... 27
    - 2A - Specifications for public notice on the premises ..... 27
    - 2B - Specifications for public notice in a newspaper and notice to owners of lots adjoining the premises ..... 30
- Schedule 4: Definitions ..... 32

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**Public notice** is required for impact assessable development (but not on the internet or single website!)

**17 Public notice requirements**

- 17.1 The applicant, or the assessment manager acting under section 53(10) of the Act, must give public notice by—
- publishing a notice at least once in a newspaper circulating generally in the locality of the premises the subject of the application; and
  - placing notice on the premises the subject of the application that must remain on the premises for the period of time up to and including the stated day; and
  - giving notice to the adjoining owners of all lots adjoining the premises the subject of the application.

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Public notification of DA



Photo: Chris McGrath (2012)

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**Proposed Development**

Have your say

From: **House Dwelling**

To: **Multi Unit Dwelling - 22 Units**

At: 160 Macquarie Street, St Lucia Qld 4067

On: Lot 2 on RP847255

By: Gregory & Elizabeth Bitomsky c/- ML Design

☎: 07 3221 6188 web: [www.mldesign.com.au](http://www.mldesign.com.au)

Approval sought: Development Permit for Material Change of Use & Preliminary Approval under s241 to Carry out Building Work - Multi Unit Dwelling

Application no.: A003174984

Comment period: 13/04/2012 to 09/05/2012

Written comments to: Brisbane City Council

☎: 07 3403 8888 email: [www.brisbane.qld.gov.au](http://www.brisbane.qld.gov.au) web: [www.brisbane.qld.gov.au/development](http://www.brisbane.qld.gov.au/development)

Public notification requirement per Queensland Government - Sustainable Planning Act 2009 Form 4 version 2.0

Photo: Chris McGrath (2012)

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There is no government email alert system for development applications or mining applications (there should be one linked to Queensland Globe) but a volunteer-run website, **PlanningAlerts**, provides email alerts for many local government areas in Australia based on registering a street address & email contact (a default radius of 2km can be changed if required)



<https://www.planningalerts.org.au/>

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**I recommend that you register on the Planning Alerts website for alerts around your own house.**

It will give you a much better understanding about development going on around you and bring home to you the importance of the planning system (and the potential amount of work for you in it).

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**When application reaches the decision part, what is the test for approval?**

- 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>

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**If a proposed development is consistent with the planning scheme & other planning layers, 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).

65

If a proposed development is not consistent with the planning scheme & other planning layers, 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>

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

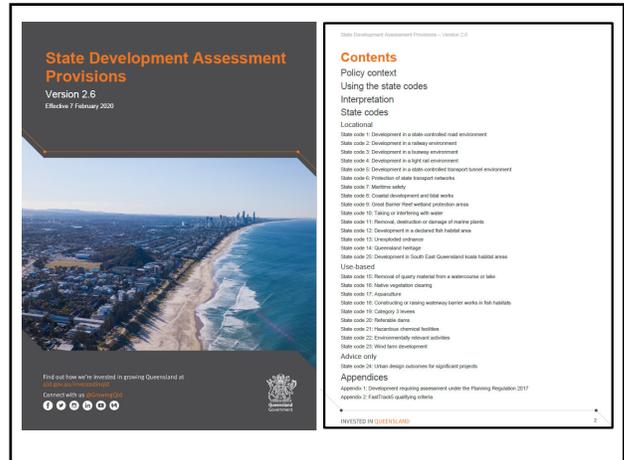


(475 pages; 24 Schedules)



(290 pages)

67



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Department of State Development, Manufacturing, Infrastructure and Planning							
<p><b>State code 14: Queensland heritage</b></p> <p><b>14.1 Purpose statement</b></p> <p>The purpose of this code is to regulate development on and adjoining a state heritage place to:</p> <ol style="list-style-type: none"> <li>1. conserve cultural heritage significance for the benefit of the community and future generations</li> <li>2. minimise or mitigate unavoidable impacts on cultural heritage significance</li> <li>3. maintain or enhance the setting and streetscape adjoining the state heritage place, and views to and from the state heritage place, where these aspects form part of its cultural heritage significance</li> </ol> <p>In addition, if it is demonstrated that there is no prudent or feasible alternative to development on a state heritage place involving or substantially reducing the place's cultural heritage significance, ensure that the place's significance is interpreted and incorporated as appropriate.</p> <p>The cultural heritage significance of a state heritage place is defined in the entry for the place in the Queensland Heritage Register. Queensland Heritage Register listings are developed and listed on the Queensland Heritage Register to protect, conserve and enhance the cultural heritage significance of a state heritage place. Queensland Heritage Register listings are developed and listed on the Queensland Heritage Register to protect, conserve and enhance the cultural heritage significance of a state heritage place. Queensland Heritage Register listings are developed and listed on the Queensland Heritage Register to protect, conserve and enhance the cultural heritage significance of a state heritage place.</p> <p><b>14.2 Performance outcomes and acceptable outcomes</b></p> <p>Development on a state heritage place should demonstrate compliance with the relevant provisions of table 14.2.2. For further details of the specific performance outcomes to be addressed, please refer to table 14.2.1. A material change of use on land adjoining a state heritage place should demonstrate compliance with table 14.2.3.</p> <p><b>Table 14.2.1: Applicable criteria for development on a state heritage place</b></p> <table border="1"> <thead> <tr> <th>Type of development on a state heritage place</th> <th>Relevant provisions of code</th> </tr> </thead> <tbody> <tr> <td>All development on a state heritage place, other than development proposing to destroy or substantially reduce the cultural heritage significance of a state heritage place</td> <td>Table 14.2.2 – PO1 – PO3</td> </tr> <tr> <td>Development proposing to destroy or substantially reduce the cultural heritage significance of a state heritage place</td> <td>Table 14.2.2 – PO4</td> </tr> </tbody> </table>	Type of development on a state heritage place	Relevant provisions of code	All development on a state heritage place, other than development proposing to destroy or substantially reduce the cultural heritage significance of a state heritage place	Table 14.2.2 – PO1 – PO3	Development proposing to destroy or substantially reduce the cultural heritage significance of a state heritage place	Table 14.2.2 – PO4	<p><b>Performance outcomes</b></p> <p>PO1 Development of a state heritage place does not have a detrimental impact on the cultural heritage significance of the state heritage place, or</p> <p>2. where it is demonstrated that it is not reasonably achievable</p> <p><b>Acceptable outcomes</b></p> <p>No acceptable outcome is prescribed.</p>
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## The SDAP apply to the State-level assessment.

## The planning scheme applies to the local government assessment.

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**6.2.9 Principal centre zone code**

**6.2.9.1 Application**

This code applies to development for which the Principal centre zone code is identified as an assessment benchmark in the assessment benchmarks column of Table 5.2.3 in Part 5. When using this code, reference should be made to section 5.3.2 and where applicable, section 5.3.3 located in Part 5.

**6.2.9.2 Purpose**

(1) The purpose of the Principal centre zone code is to provide for the largest and most diverse mix of uses and activities that forms the core of an urban settlement.

It includes key concentrations of high order retail, commercial, employment, residential, health services, administrative, community, cultural, recreational and entertainment activities and other uses, capable of servicing the planning scheme area.

(2) The overall outcomes sought for the zone code are as follows:

(a) The central business districts of Warwick and Stanthorpe are the preferred location for commercial activities, government offices and community facilities that serve the region. The areas within the Principal centre zone are the only areas in Warwick and Stanthorpe in which shopping centres and supermarkets are higher than local centre buildings are located. Development of higher order purposes addresses a demand for activities within the centres in order to maintain the economic vitality and vitality of the centres.

(b) A broad range of retail, commercial, administrative, community, cultural and entertainment activities are provided. Industry uses are limited to those small scale service industries that serve the day to day needs of businesses and employees in the centre and have a similar built structure to shops and offices in the centre.

(c) Residential development and tourist accommodation is provided where a high standard of residential amenity can be achieved. All accommodation is located above ground level or at the rear of commercial uses in order to maintain the quality of the centre and active street frontages.

(d) Development in a Principal centre ensures a well-designed and functioning urban structure by:

- Building on the existing strengths of the centre;
- Complementing existing land uses and activity;
- Sustaining and developing existing built form, business, and infrastructure;
- Responding to local economic need and demand;
- Development creates centres that are safe, convenient, comfortable and attractive. Development provides a high level of amenity and is reflective of the surrounding character of the area.

(e) The heritage significance of the centres is protected in terms of streetscape and individual buildings.

(f) The buildings that are listed in the Local heritage register have a built form that ensure that the building respects and complements the heritage values of the Local heritage place, without replicating or mimicking heritage detailing.

(g) Buildings in proximity to those listed in the Local heritage register have a built form that ensure that the building respects and complements the heritage values of the Local heritage place, without replicating or mimicking heritage detailing.

(h) Public open space areas including plazas, parks and gardens are provided in these areas wherever possible in conjunction with commercial buildings is located and designed to contribute to the streetscape and wherever possible maximise pedestrian connectivity.

(i) Development has access to infrastructure and essential services and does not compromise the quality of the centre. New development will be permitted to be serviced by existing services. Conditions regarding the height of necessary built infrastructure or payment of additional built infrastructure costs may be imposed where development is inconsistent with the assumptions for development set out in section 6.2 of the LPS, or where the LPS:

- Development is designed to maintain sustainable living and transport uses;
- The centres are accessible to all modes of transport and the use of a range of transport options is encouraged;
- Walking areas are usually walkable;
- Service and uses are provided from the impacts of previous activities that may cause risk to people or property.

**6.2.9.3 Assessment benchmarks**

**Table 6.2.9.3 – Principal centre - Assessable development**

Performance outcomes	Acceptable outcomes
<b>PO1</b> Premises are of a type and scale consistent with the role of Warwick and Stanthorpe central business districts as the key commercial and retail centres in the Southern Downs Region.	<b>AO1</b> No acceptable outcome identified.
<b>PO2</b> All sites are located designed and oriented to reinforce the role of the zone as a socially, culturally and economically vibrant place in which higher order purposes and facilities to meet the needs of the region are available and in which there is a high level of daytime and night time activity.	<b>AO2</b> When located in Paterson Street, Warwick, or Margaret Street, Stanthorpe, uses other than business activities or entertainment activities are located above ground level or at the rear of commercial uses.
<b>PO3</b> Industry uses are small scale low impact industries that serve the day to day needs of businesses and employees in the centre and have a similar built structure to shops and offices in the centre.	<b>AO3</b> No acceptable outcome identified.
<b>PO4</b> The appearance and siting of buildings, other structures, carparking areas or signage is compatible with the local streetscape character, the style and design of nearby buildings and is respectful and sympathetic to any Local heritage place.	<b>AO4</b> No acceptable outcome identified.
<b>PO5</b> All sites are designed and oriented to preserve or improve the physical conditions of the adjoining area including noise, light, air quality, vehicle and pedestrian generation and flow.	<b>AO5</b> No acceptable outcome identified.
<b>PO6</b> The density of development is consistent with the purpose of the centre as a vibrant and diverse area.	<b>AO6</b> The number of buildings contained in a multiple dwelling development is calculated as 1 building per 20 of site area.
<b>PO7</b> The height, site cover and setbacks for buildings comply to respect or enhance the character and amenity of their streets and neighbouring premises via a built form that: <ol style="list-style-type: none"> <li>maximises pedestrian connectivity;</li> <li>maximises solar access;</li> <li>maximises views;</li> <li>maximises privacy;</li> <li>maximises energy efficiency;</li> <li>maximises sustainability;</li> <li>maximises resilience;</li> <li>maximises safety;</li> <li>maximises security;</li> <li>maximises health;</li> <li>maximises well-being;</li> <li>maximises quality of life;</li> <li>maximises social cohesion;</li> <li>maximises community participation;</li> <li>maximises cultural and creative industries;</li> <li>maximises economic vitality;</li> <li>maximises environmental sustainability;</li> <li>maximises social and economic resilience;</li> <li>maximises social and economic inclusion;</li> <li>maximises social and economic equity;</li> <li>maximises social and economic justice;</li> <li>maximises social and economic participation;</li> <li>maximises social and economic well-being;</li> <li>maximises social and economic resilience;</li> <li>maximises social and economic inclusion;</li> <li>maximises social and economic equity;</li> <li>maximises social and economic justice;</li> <li>maximises social and economic participation;</li> <li>maximises social and economic well-being;</li> </ol>	<b>AO7</b> In partial fulfilment of the PO... <b>AO8</b> The height, site cover and setbacks for buildings comply to respect or enhance the character and amenity of their streets and neighbouring premises via a built form that: <ol style="list-style-type: none"> <li>maximises pedestrian connectivity;</li> <li>maximises solar access;</li> <li>maximises views;</li> <li>maximises privacy;</li> <li>maximises energy efficiency;</li> <li>maximises sustainability;</li> <li>maximises resilience;</li> <li>maximises safety;</li> <li>maximises security;</li> <li>maximises health;</li> <li>maximises well-being;</li> <li>maximises quality of life;</li> <li>maximises social cohesion;</li> <li>maximises community participation;</li> <li>maximises economic vitality;</li> <li>maximises environmental sustainability;</li> <li>maximises social and economic resilience;</li> <li>maximises social and economic inclusion;</li> <li>maximises social and economic equity;</li> <li>maximises social and economic justice;</li> <li>maximises social and economic participation;</li> <li>maximises social and economic well-being;</li> </ol>

Southern Downs planning scheme [Soft pages 192-193] Part 5-12 Southern Downs planning scheme Part 5-10

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Overall outcomes & assessment benchmarks for the Principal Centre Zone Code under the *Southern Downs Planning Scheme 2012* (amended 2018)

- (f) The heritage significance of the centres is protected in terms of streetscape and individual buildings.
- (g) The buildings that are listed in the Local heritage register are intended to be used for centre purposes provided that the development is undertaken in a manner that protects heritage values.
- (h) Buildings in proximity to those listed in the Local heritage register have a built form that ensure that the building respects and complements the heritage values of the Local heritage place, without replicating or mimicking heritage detailing.

### 6.2.9.3 Assessment benchmarks

Table 6.2.9.3 – Principal centre - Assessable development

Performance outcomes	Acceptable outcomes
<b>PO4</b> The appearance and siting of buildings, other structures, carparking areas or signage is compatible with the local streetscape character, the style and design of nearby buildings and is respectful and sympathetic to any Local heritage place.	<b>AO4</b> No acceptable outcome identified.

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## Is a development application likely to be granted?

- Does the application comply with relevant planning scheme and SDAP?

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## Appeals to the Planning and Environment (P&E) Court

- Applicants can appeal any decision they are unhappy with (including code or impact assessable development) to the Planning & Environment Court
- Submitters (members of the public) can only appeal impact assessable development that they have made a properly made submission on.

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## 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?



Picture: John Barnes

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## Postscript:

### Two applications to demolish in 2007-2014

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In 2010-2011 two objectors successfully appealed against a (combined) application to demolish 82 & 84 Fitzroy Street.

[The P&E Court ruled they were unable to object to the demolition of 82 Fitzroy Street as it was code assessable].



Environmental Australia

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### Plumb's Chambers case

This case involved an appeal in the Queensland Planning and Environment Court to protect two cultural heritage listed buildings known as "Plumb's Chambers" in Warwick.

Plumb's Chambers at 82 and 84 Fitzroy Street, Warwick, comprise a brick and timber building possibly dating to the 1820s and an 1874-75 stone building. A satellite image of the location of the buildings is available [here](#).

A case study of the litigation with expert reports is available at <http://envlaw.com.au/plumbs-chambers-case/>

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Following its loss in the appeal, the shopping centre owner lodged a new application to demolish 82 Fitzroy Street (alone) in mid-2012.

The application was code assessable at State and local government levels, therefore, it was not publicly advertised and no objections or appeals were available to members of the public.

The State and local governments approved the application to demolish 82 Fitzroy Street.

The owner of the shopping centre demolished 82 Fitzroy Street on 27 October 2014 and, pursuant to the conditions of approval, restored 84 Fitzroy Street in 2015. No. 82 was then removed from the Queensland Heritage List.

The shopping centre was expanded in 2016 across the site where 82 Fitzroy Street previously stood.

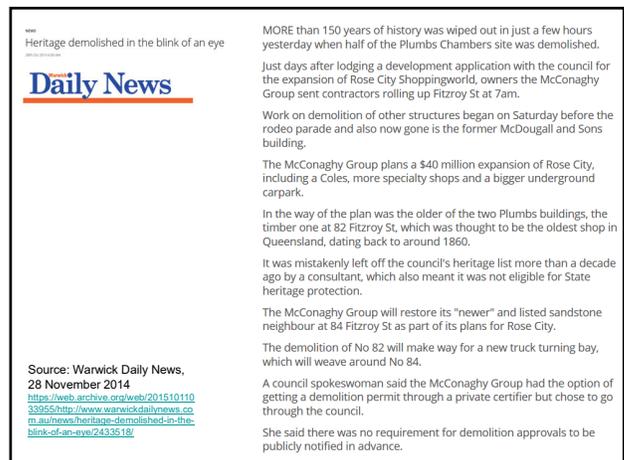
81



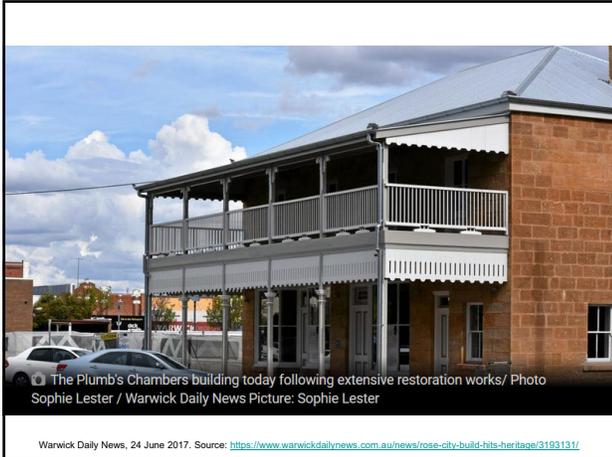
82



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84



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### Today's lecture (Lecture 3) outline

1. Today's problem: Plumb's Chambers demolition for shopping centre
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?
  - Are any applications needed to gain government approval?
    - How is the proposal assessed under the *Planning Act 2016*?
    - Step 1: 3 preliminary questions
    - Step 2: DA process (application part, etc)
  - Is a development application likely to be granted?
    - Does the application comply with relevant planning instruments, especially the planning scheme?

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**Further resources:**

Summaries of DA system available on Department's website:  
<https://planning.dsd.mip.qld.gov.au/>

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**Further resources:**

Useful summaries in EDO factsheets  
<https://www.edoqld.org.au/factsheets>

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**Take home points:**

1. Development assessment is a complicated and intricate process but if you work through it systematically you can identify the requirements for different applications and determine whether they are likely to be successful in obtaining approval.
2. The concept of "development" and its components (e.g. "use", MCU, ROL, Op Works, etc) are critical to understand to work in the planning & development sector in Queensland.
3. Not all "development" requires government approval and to work out what is assessable development, you need to read:
  - the *Planning Regulations* (for State-level triggers) and
  - the relevant local government planning scheme (for local-level triggers).

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**Try quizzes 1 & 2**

<http://envlaw.com.au/category/quizzes/>

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