

Iconic Queensland Places Bill 2008

Explanatory Notes

Introduction

The purpose of the *Iconic Queensland Places Bill 2008* (the Bill) is to protect places with characteristics or qualities in their natural or built environment that reflect or contribute in a substantial way to Queensland's character.

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

The Bill establishes places considered to be iconic and provides the power for the Minister to declare others. It will protect the established iconic places by modifying laws and procedures about planning, development assessment and local law development by local governments.

Short Title of the Bill

The short title of the Bill is the *Iconic Queensland Places Bill 2008*.

Objectives of the Bill

The policy objective of the Bill is to protect places with characteristics or qualities in their natural or built environment that contribute substantially to Queensland's character.

The Bill will apply to those local governments which will be in a new local government area as a result of the local government reform. It does not mandate that these local governments have to propose a declaration for an iconic place, but provides the opportunity if the local government and its community are supportive.

Policy rationale

The Bill supports the preservation of Queensland's iconic places. A declaration of an iconic place ensures that decisions of and within the new regional local governments will take into consideration the distinctive character of unique communities which contribute substantially to Queensland's character.

Legislation is required to identify iconic places and ensure protection of those features of the planning, development assessment framework, local laws and general policies which contribute to the iconic values of those places.

The legislation will provide for the declaration of iconic places by the Minister administering the Act and for particular arrangements for planning and development assessment and local law making in those areas, which will complement existing planning and development assessment arrangements under the *Integrated Planning Act 1997* (IPA) and local law development under the *Local Government Act 1993* (LGA).

The legislation modifies certain existing decision making processes for which adequate accountabilities and rights of review/appeal already exist. The modifications are intended to enhance community confidence in the further development of planning instruments, development assessment processes and local law and policy making in such a way to be consistent with the protection of the character of their iconic communities. The modifications do not compromise existing rights or responsibilities of land holders in iconic places; and establish transparent processes for the consideration of the impact of the proposed law on the iconic place's values.

To effect the legislation as quickly as possible, a process has been put in place to identify potential iconic places that may be suitable for declaration under the legislation. Based on a consultation draft of the Bill circulated in early December 2007, all current local governments affected by the amalgamations have been invited to express their interest in being declared as an iconic place under this legislation. That interest must be expressed prior to the local government elections, that is, provided the Bill is passed by Parliament and Assent is subsequently given, between the date of Assent of the Bill and 14th March 2008.

Even though local governments are currently in caretaker mode under the *Local Government Act 1993*, that caretaker mode does not limit local governments from meeting between now and the elections on 15th March;

and they are still able to make a decision to submit an expression of interest until that time.

How objectives are achieved

The Bill achieves the objectives by:

1. Providing for the declaration of iconic places; their iconic values and the relevant planning and local law instruments that currently protect those values.
2. Modifying laws and procedures about local law development; planning and development assessment and policy making by local governments to ensure consideration of the iconic values of the declared iconic places.

In considering whether or not to make a declaration, the Minister takes into account a range of specific criteria including pressure from population growth and new development that will impact on the iconic nature of the area; demonstrated threats to the characteristics of qualities intending to be protected; and support of the community for the declaration.

The legislation provides the necessary framework to protect these established locations.

Alternative method of achieving the policy objectives

There are no other viable alternatives that would achieve the Government's policy objectives.

Estimated cost for Government implementation

There is likely to be administrative costs to Government associated with the establishment and operation of the independent development assessment panels relevant to Iconic Queensland Places. Costs for each panel will vary dependent on the number of appointed members; the volume of development applications made relevant to the declared iconic place; the number of applications which the panel chooses to decide and the number of appeals which may require defence.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

The transitional provisions relevant to the Iconic Queensland Places provisions, enable a development application lodged prior to the introduction of the legislation to come before the development assessment panel at the panel's discretion. This is considered essential to effect the intent of the legislation that regional councils do not overlook the distinguishing characteristics of local communities; and is expected to have very limited application. Parties retain usual legal rights to contest panel decisions.

Consultation

All councils affected by the amalgamations under the local government reforms have been provided with a draft consultation Bill and were invited to provide feedback on the Bill. At the same time, Councils were advised that if they wished to have iconic places declared, they may submit expressions of interest in a declaration for their areas after assent of the Bill. Specific consultation has occurred with local governments expressing an interest in the legislation and its operation.

Consultation has occurred with key government departments that may have an interest in the operation of the Bill.

Consultation also occurred with the Local Government Association of Queensland and key industry stakeholders including peak bodies as follows: Urban Development Institute of Australia; Property Council of Australia; and the Planning Institute of Australia.

Notes on Provisions

Part 1 Preliminary

Division 1 The short title of the Bill is the *Iconic Queensland Places Bill 2008*.

The purpose of the Act and its achievement have been addressed above.

Division 2 Interpretation

Clause 3 provides that definitions of particular words used in the Bill are contained in a schedule. Other words used that are already defined under the *Integrated Planning Act 1997*, schedule 10 have the meaning given to them under that schedule.

Clause 4 states that an iconic place is a place which is stated in schedule 1; or those which are declared under the Bill to be an iconic place.

Part 2 Declarations

Division 1 Making declarations

Clause 5 describes the information that needs to be included in the gazettal notice for declaration of iconic values for the iconic places which are stated in schedule 1.

Clause 6 empowers the Minister to declare a place as an iconic place. The clause explains that the Minister can not make an iconic place declaration after 30 June 2008.

The clause also explains that before other iconic places may be declared under the Bill, the Minister must be satisfied that certain criteria apply to the proposed iconic place, before making a decision to make a declaration. The provision states what must be identified in the Minister's declaration.

Clause 7 states that a declaration is not subordinate legislation.

Clause 8 explains that the Minister may publish guidelines about how the Minister will determine the level of local community support for the proposed declaration. The guidelines, if made, would be published by gazette notice. The Minister may consider, but is not bound by, the guidelines when making a decision regarding an iconic place declaration.

Division 2 Publication of and access to information about iconic areas

Clause 9 describes the publication process of declarations after the Minister has made an iconic place declaration. The declaration is not invalid or affected if publication does not occur.

Clause 10 requires that the chief executive must have each declaration available for public access. Access includes the availability for purchase.

Part 3 Making or amending local planning instruments for iconic places

Division 1 Preliminary

Clause 11 provides definitions relevant for part 3 of the legislation.

Division 2 Modifications to general scheme and structure plan processes

Clause 12 provides that Division 2 applies if a local government proposes to make or amend its planning scheme (scheme proposal) under the *Integrated Planning Act 1997* (IPA) and that if made, would or may have effect in an iconic place or would change or replace a protected provision relating to the place.

Clause 13 requires an impact report be prepared by the local government about the scheme proposal evaluating its effect on the place's iconic values. The report is to be provided to the Minister.

Clause 14 describes that a Minister cannot advise local government under section 10 (2) of Schedule 1 (Process for making or amending planning schemes) of the IPA in relation to the scheme proposal. Section 10 (2) of Schedule 1 of the IPA allows the Minister to advise local government it need not comply with particular sections.

Clause 15 applies when the Minister, under certain circumstances (section 11 of the general scheme process, or section 3 or 7 of the structure plan process) is considering whether or not State interests would be adversely affected by the scheme proposal.

The clause requires the Minister to consider whether the scheme proposal (if given effect to) would be inconsistent with protecting a place's iconic value. When making this consideration, the Minister must have regard to the impact report.

Clause 16 sets out the treatment of a scheme proposal if it is deemed by the Minister that a place's iconic values are affected. If the scheme proposal is for a planning scheme, the Minister must impose conditions on the notification of the scheme that are considered necessary in order to preserve the iconic values of a place.

If the scheme proposal is for an amendment, the Minister must notify the local government that either it may not proceed with the amendment; or it may notify the proposal, subject to conditions that the Minister considers necessary to preserve the iconic values.

Clause 17 describes the local government's public notification of the impact report. A notice about the scheme proposal must state that the local government has given the Minister a report that evaluates the effect of the

scheme proposal on the iconic place's values. The notice must also state that the report is available for public inspection and purchase.

Clause 18 sets out the reconsideration of the scheme proposal following public notification. The local government is to provide the Minister a copy of each properly made submission regarding a place's iconic values.

If the Minister is considering if the scheme proposal would adversely affect State values, the Minister must also give consideration to whether the scheme proposal (if given effect to) is inconsistent with protecting the place's iconic values. The Minister must have regard to each of the submissions when making this consideration.

Clause 19 explains the treatment of a scheme proposal after reconsideration if it is deemed to affect a place's iconic values. In this situation, a Minister must impose conditions on the adoption of the scheme proposal that are considered necessary to preserve iconic values. If a structure plan process applies to the scheme proposal, the Minister may advise the local government that it may not proceed.

Division 3 Modifications to Temporary Local Plan Instrument process

Clause 20 explains that this division is applicable when local governments propose to make a temporary local planning instrument (TLPI), and if made, would or may have effect on an iconic place, or would suspend or otherwise affect the operation of a protected provision relating to the iconic place.

Clause 21 requires the local government to prepare an impact report evaluating the effect the TLPI may have on the iconic place's values. The report is given to the Minister when the proposed TLPI is provided to the Minister.

Clause 22 explains that in considering whether the proposed TLPI should be made, the Minister must consider if it was given effect to, whether it would be inconsistent with protecting the place's iconic values. This consideration must include the impact report.

Clause 23 explains that if the Minister considers that the proposed TLPI would be inconsistent with protecting the place's iconic values, then the

Minister must impose conditions necessary to preserve those values or advise the local government it may not proceed with the proposal.

Division 4 **Modifications to scheme policy process**

Clause 24 explains the application of the division. It applies when a local government proposes to make or amend a planning scheme policy under section 1 of the scheme policy process and if made, that policy would or may have effect in an iconic place and would change or replace a protected provision relating to the place.

Clause 25 explains that until the Minister advises the local government under this division, it cannot start the consultation stage under part 2 of the scheme policy process. The Minister's advice may include imposing conditions which must be complied with before proceeding, or advising the local government it may not proceed with the proposal (provided under section 29).

Clause 26 explains that the local government must prepare an impact report about the proposed planning scheme policy which evaluates its effect on the place's iconic values.

Clause 27 requires the local government to give the Minister the impact report and the policy proposal.

Clause 28 requires the Minister to consider if the policy proposal would be inconsistent with protecting the iconic place's values and include the impact report in this consideration. The Minister must then advise the local government if the policy proposal would be consistent with the place's iconic values.

Clause 29 states that if the Minister considers the policy proposal would be inconsistent with the place's iconic values, then the Minister must either impose conditions about the policy proposal content or advise the local government it may not proceed with the proposal. If conditions are imposed, the local government may only take another step in the process if the conditions that are relevant to the step have been complied with.

Part 4 Development assessment in iconic places

Division 1 Preliminary

Clause 30 explains that for part 4, with the exception of division 5, the references to Minister mean the Minister who administers the *Integrated Planning Act 1997*, chapter 3.

Division 2 Development assessment panels for iconic places

Subdivision 1 Establishment and functions

Clause 31 states that the Minister must establish a development assessment panel for each iconic place and appoint its members according to section 34.

Clause 32 requires the Minister to give the local government notice that a panel has been established and its membership.

Clause 33 explains the panel's functions. If the local government is the assessment manager for a development application in the iconic place, the panel decides whether or not it is going to decide the application (reference decision). If the panel decides to decide the application, then it does so as if it were the assessment manager.

Subdivision 2 Panel membership

Clause 34 outlines the composition of the development assessment panel. There must be representation from a cross section which is stated in the Act and the total is not to exceed five people. The representation includes a person with community or environmental experience or expertise.

Councillors must not comprise a majority of the members. It is permissible for a member to be a member of more than one panel.

Clause 35 sets out that panel members are to be paid amounts which are decided by the Governor in Council. However, public service officers must not be paid if they act as a panel member during the officer's ordinary hours of duty.

Clause 36 outlines the process when a panel member has a material personal interest in an issue being considered by the panel which could conflict with the member's performance. Failure to comply attracts a penalty.

Subdivision 3 Miscellaneous provisions

Clause 37 states that the panel represents the State and has the status, privileges and immunities of the State.

Clause 38 states that the panel must prepare and give the Minister administering this Act and the Minister administering the *Integrated Planning Act 1997*, a written report about the performance of its functions during the financial year. To remove any doubt, it is declared that this requirement does not limit or affect any obligation under the *Financial Administration and Audit Act 1977* to give a report relating to the panel.

Clause 39 states that the panel makes a decision by a majority of its members. The clause allows for a regulation to provide for the conduct of the panel's business but it may instead choose to conduct its business in the way it considers appropriate.

Clause 40 allows for the appointment of public service officers to help the panel perform its functions.

Clause 41 allows the Minister to delegate the Minister's functions under division 2 to the chief executive, or appropriately qualified public service officer and provides a definition of "appropriately qualified".

Division 3 Reference to panel

Clause 42 explains that this division only applies if the local government is the assessment manager for a development application for premises that are wholly or partly in an iconic place.

Clause 43 states that the decision stage does not start until the panel has made a reference decision.

Clause 44 requires the local government to provide the panel a copy of the application, supporting material and acknowledgement notice for the application within the information request period.

Clause 45 requires the panel to make the reference decision within either 20 business days after receiving the information (clause 44) from the local government, or 20 business days after the end of the information request period – whichever is earliest. If the panel does not comply, it is taken to be that the panel is not to decide the application. The clause also requires the panel to consider the substantial effect the development application may have on the place's iconic values in making its reference decision.

Clause 46 requires the panel to give the Minister, the local government and the applicant, notice of the reference decision.

Clause 47 explains that if the panel decides to decide the application, then the application must be decided under division 4. If the panel decides *not* to decide the application, then the local government must continue to decide the application under IDAS.

Division 4 Deciding of application by panel

Clause 48 explains that division 4 applies if the panel has decided to decide the development application instead of the local government.

Clause 49 explains that the local government continues to decide the application under the stages of the Integrated Development Assessment System (IDAS) up to but not the giving of, the decision notice about the application.

Clause 50 explains that a local government's decision is only a recommendation to the panel unless the Minister reverses the panel's

decision to decide the application and the local government has to decide the application instead.

Clause 51 requires the local government to give the panel notice of its recommendation as soon as practicable after making it and must give the panel all supporting and common material for the application.

Clause 52 requires the panel to decide the application under IDAS as if it were the assessment manager and provides timeframes for this to occur.

Clause 53 explains that the section applies if the panel gives a decision notice or negotiated decision notice. If the panel gives a decision notice or a negotiated decision notice then it must give the local government a copy. If either no negotiated decision notice is given, or a negotiated notice *is* given, then the decision notice is taken to have been given by the local government as assessment manager.

Clause 54 explains that the section applies for appeals relating to the application under relevant sections of the *Integrated Planning Act 1993*. If there is an appeal, the panel represents the State and is the respondent for the appeal. The section allows for the local government to appeal as if it had been a submitter for the application.

Division 5 Ministerial reversal of reference decision

Subdivision 1 Preliminary

Clause 55 explains that division 5 applies where the local government is the assessment manager and the panel has made the reference decision for the application. The division does not apply if the local government or the panel has given the decision notice for the application.

Clause 56 explains that in division 5, references to the Minister mean the Minister who administers this Act.

Subdivision 2 Reversal provisions

Clause 57 allows for the Minister to reverse the panel's decision about whether or not they are going to decide the application. In reversing the panel's decision, the Minister must consider the substantial effect that the development application may have on the place's iconic values and also give notice to the panel, the local government and the applicant about the reversal.

Clause 58 explains that if the panel's original decision was to decide the application, the reversal means that the panel had decided *not* to decide the application, and the local government may decide the application.

Division 6 Changes to development approvals decided by panel

Clause 59 explains that if a development approval was a decision by the panel, then the panel also decides a change to the development approval. The panel also makes decisions on requests for changes to or cancellations of a condition if it was the panel who decided the condition.

Part 5 Requirements for changing or extending local laws identified in declarations

Division 1 Preliminary

Clause 60 explains that this part applies when a local law has been identified in an iconic place declaration and a local government is proposing to amend or repeal the local law or decide under the *Local Government Act 1993* that the local law is or is not a redundant provision (proposed action). The part imposes requirements in addition to the existing process for making a local law under the *Local Government Act 1993* (LGA). It does not limit that existing process.

Division 2 Requirements for all types of proposed action

Clause 61 requires a local government to prepare an impact report about the effect of taking the proposed action on the place's iconic values.

Clause 62 requires that, where a local government undertakes consultation on taking the proposed action, it must include in any notice for the consultation, that it has an impact report evaluating the effect of taking the proposed action on the place's iconic values. The impact report must be available for inspection.

Division 3 Additional requirements if State interests must be considered

Clause 63 explains that Division 3 applies as well as Division 2 if the *Local Government Act 1993* chapter 12 part 2, division 2 or 3 applies to the local government's proposed action relevant to this Part. This includes local laws and interim local laws.

Clause 64 requires a local government to give an impact report to the Minister administering the *Local Government Act 1993*, when it gives that Minister the documents or information required under the *Local Government Act 1993* sections 861(1), 876(1) or 872(2)(b).

Clause 65 explains that State interests are taken to include the place and its iconic values when applying the Local Government Act, chapter 12, part 2, division 2 or 3 in relation to taking of the proposed action by the local government.

Division 4 Additional requirements for other types of proposed action

Clause 66 explains the application of the division. This division and division 2 applies if the local government is taking a proposed action as described under division 1. This includes model local laws and subordinate local laws.

Clause 67 requires a local government to provide public notice of the local government's proposed action as well as other information. The notice must also advise that a report evaluating the effect of taking the proposed action on the place's iconic values is available for inspection.

Clause 68 requires the local government to provide free inspection of the impact report at its office and on its website. The report must be available to any person for at least 21 days after publishing the notice under section 67.

Part 6 Miscellaneous provisions

Clause 69 applies to master plan applications for declared master planned areas which are also an iconic place. The Minister administering this Act must consider the effect of the proposed master plan on the place's iconic values and if it is inconsistent with protecting these values, may recommend conditions to remove the inconsistency to be included in any approval, or recommend that the application be refused.

Clause 70 requires that if a local government proposes to make or amend a policy that may have effect in an iconic place, the local government must consider the effect of the policy or amended policy on the place's iconic values.

Clause 71 states that the Act must be reviewed within three years for its operation and effectiveness. Included in the review is the need to have regard to the operation and effectiveness of the development assessment panels and the need to continue their functions. A report on the review must be laid before the Legislative Assembly as soon as practicable after the review has been completed.

Part 7 Transitional provisions

Clause 72 explains that Part 3 only applies if a decision has been made after the changeover day by the local government to prepare or propose a

scheme proposal, a Temporary Local Planning Instrument or a planning scheme policy.

Clause 73 explains that Part 4 does not apply if a development application has been decided before the changeover day.

Clause 74 accounts for situations where a development application has been made to the local government, but not decided before changeover day. In general, Part 4, division 3 (reference to the panel) does not apply. That is, the panel does not decide if it will decide the application.

However, if the part and division would have applied, the panel may still make a reference decision for the application. If the panel's decision is to make the reference decision, then the process described in Part 4, divisions 4 to 6 apply.

Schedule 1 identifies the iconic places at commencement of the Act. There are only two. These are the whole of Noosa Shire and the whole of Douglas Shire.

Schedule 2 contains the definitions of particular terms used in the Bill.