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QELA, a not for profit organisation, consults with and educates interested professionals and government representatives about planning, development and environmental laws which apply, or are proposed to apply in Queensland. QELA provides a collegiate forum for multi-disciplinary interaction and collaboration.

19 December 2016

Department of Infrastructure, Local Government and Planning

Email: bestplanning@dilgp.qld.gov.au

Submission about the Draft Development Assessment Rules

Thank you for the opportunity for Queensland and Environmental Law Association (**QELA**) to make further comments on the Draft Development Assessment Rules (**Draft DA Rules**) (version dated October 2016).

QELA is a non-profit, multi-disciplinary association. Its members include lawyers, town planners, and a broad range of consultants who represent and advise a miscellany of participants in the development industry.

QELA has provided a number of submissions about planning reform, including about the recent planning reform agenda and in particular about earlier drafts of the development assessment rules. Following on from previous input, the following submission relates to the abovementioned Draft DA Rules.

The attached table identifies detailed feedback, questions, concerns and recommendations in relation to the Draft DA Rules. Of principal concern to QELA are areas where ambiguity could arise, which may lead to litigation or uncertainty for participants in the development assessment process. Some examples of these areas are the use of the term “day” and sections 11.3(b) and 14.1(b).

We would welcome the opportunity to assist in this process further, if required.

Yours sincerely

A handwritten signature in blue ink that reads 'Leisa Sinclair'.

Leisa Sinclair

President

Queensland Environmental Law Association



Draft Development Assessment Rules under the Planning Act 2016 (October 2016)	
Section reference	Comments
General	The Rules use the term day, which is defined as a business day. This is confusing when generally in legislation a day is any day and a business day is a business day. This is particularly confusing when the term business day is used in the <i>Planning Act 2016</i> . A consistent approach should be adopted to avoid confusion and unintended mistakes in calculating time.
3.7	It ought to be clear what happens to application fees. If the development application is taken to have not been made it is arguable that these are to be refunded (as they are taken to have not been paid).
Footnote 2	This ought to be a section within the Rules.
6.3 and 9.1	<p>Section 6.3 says that the giving of a referral confirmation notice or an action notice ends the referral confirmation period on the day the notice is given to the applicant.</p> <p>Section 9.1 says that the referral agency assessment period starts the day after the first of the following occurs – the referral confirmation notice has been given or the referral confirmation period has ended.</p> <p>This could result in the referral agency assessment period starting at a point in time when a development application has not been properly referred and is the subject of an action notice. The timing in section 9.1 is not correct.</p>
11.3(b)	The <i>Transport Infrastructure Act 1994</i> provides for a development <i>approval</i> to be taken to be a decision under section 62 of that Act. Section 11.3(b) refers to a development <i>application</i> to be taken to be an application for a decision under section 62 of that Act. This requires further consideration.
13.1	<p>We query whether it is necessary to obtain the agreement from a local government to the extension of the period for response to an information request. This may be an unnecessary and unwanted administrative step for local governments, particularly for more complicated development applications.</p> <p>There should be a process for informing the assessment manager if an extension is granted by a concurrence agency (as is the case with section 277(4) of the <i>Sustainable Planning Act 2009 (SPA)</i>).</p>

Draft Development Assessment Rules under the Planning Act 2016 (October 2016)	
Section reference	Comments
14.1(b)	The wording here is generally inconsistent with the wording of section 13.3. Section 14.1(b) refers to a request to proceed with assessment, but no such request is required in 13.3. Rather 13.3 uses the language that the applicant “advise” the assessing authority to proceed with assessment. The language used should be consistent to avoid arguments that there is a deliberate reason for different language.
14.2	Section 14.2 refers to the assessing authority's assessment. There is no such reference in section 14.1. Perhaps section 14.2 should be redrafted, for consistency with section 14.1, to read: If an applicant does not respond to the information request in accordance with section 13.2 within the period stated under section 13.1, the applicant's response period ends the day after the day on which the period under section 13.1 would have otherwise ended.
15.1	Part 3 should end on the earlier of the times in section 15.1(a) or (b).
15.1(a)	It is not clear whether Part 3 is complete on the earlier or the later of any stated period under sections 12.1 and 12.2.
15.1(b)	This should refer to the earlier of the two periods in (i) and (ii).
16.1(a)	The triggers in section 16.1(a) could be drafted with greater clarity.
20.1(a)(ii)	The assessment manager should be required to notify the applicant if it decides to end the period early so an applicant knows how long the decision period is (including for the purpose of understanding when a deemed refusal arises).
23.1(b)	An assessment manager must be notified of any extended period for an amendment to a referral agency response.
Footnote 8	This is unnecessary as section 22.2 deals with the matter.
24.1	We would query whether this section is necessary.
26	The term referral requirements is confusing as they are not requirements, rather triggers for referral.

Draft Development Assessment Rules under the Planning Act 2016 (October 2016)	
Section reference	Comments
28.4	It is unclear why the right to change a referral agency response is limited only to the circumstances in section 28.2(a). The changes under sections 28.2(b) and (c) are relevant also.
29	It ought to be clear that 29 only applies before a development application is decided (as is made clear for missed referral requirements in section 30.1).
29.5	The effect of this section is to allow a missed concurrence agency to make an information request in circumstances where it would not have been so entitled had it been properly referred in the first place. There does not appear to be a good basis for this.
31.1(a)	This should be made subject to section 29.3.
32.2	There should be requirements for what should be in a notice stopping a current period, for example for how long it is stopped and a running cumulative total of stoppages.
32.3	The notice stopping an applicant's current period should be given to all assessing authorities.
37	The header describes this part as "Giving reasons for decision". However, the part is not about giving reasons for a decision. Rather, it is about publishing a decision.
Schedule 3 Public notice requirements	The header for "Requirements for giving notice to owners of all lots adjoining the premises" is missing the word "for". This header should refer to land rather than lots and premises. Otherwise, it introduces different terms with different defined meanings under the <i>Planning Act 2016</i> .
Schedule 4, Condition 5 for MCU and ROL	This condition is uncertain because planning scheme provisions sometimes only contain performance based requirements.