

Comment – Erin Dunn

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The intersection of the Planning Act 2016 and the Building Act 1975 creates a multifaceted framework that can be challenging to navigate for professionals and the public alike. This complexity primarily stems from the overlapping jurisdictions and responsibilities assigned to different entities within the development assessment process and the lack of clear process and awareness for Building Certification. How it is supposed to be interpreted the same as any other "development application". Please refer to the attached prepared report.

Submission to the Queensland Productivity Commission

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Area of Practice: Building Certification Functions of Class 1 and Class 10 Buildings

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Introduction

As a Building Certifier (Level 3), I work at the intersection of the Building Act 1975 and the Planning Act 2016, with a particular focus on residential development (Class 1) and associated structures (Class 10). In my role, I frequently experience the complexity and fragmentation that exists between planning and building legislation in Queensland. These complexities not only hinder productivity but also increase the risk of regulatory non-compliance.

Key Issue Identified - Legislative Complexity Between the Planning Act and Building Act

The intersection of the Planning Act 2016 and the Building Act 1975 creates a multifaceted framework that can be challenging to navigate for professionals and the public alike. This complexity primarily stems from the overlapping jurisdictions and responsibilities assigned to different entities within the development assessment process.

Under the Planning Act 2016, development applications, simply for residential development, may require assessment by multiple entities, depending on the nature of the proposed development.

For instance, developments of new dwellings found within certain overlays of a Local Government attract Code Assessment categories of assessment resulting in both planning approval (Local Government as Assessment Manager for Development) and building certification (Building Certifier as Assessment Manager for Building). Then in some further cases and even in addition and on top of these 2 the same development could also require referral agency for both Local and State matters (EG – noncompliance with Design and Siting Matters or Building Work proposed within declared fish habitat areas).

The current framework is riddled with confusion requiring complex and headache inducing zig zag reading between 2 legislative branches which contain multiple conflicting and similar definitions and numerous other subordinate documents which differ from region to region and this is only to determine the Type of Development, Category of Development and who the assessment manager/s be for that development proposal. Not to mention the industry demand and pressure requiring this process to take less and less time.

Furthermore, the current assessment framework does not adequately support or promote coordination between planning and building assessments. Applicants and professionals alike often encounter difficulties in interpreting the full suite of requirements for development proposals. This includes misinterpretations or inconsistencies in the information provided—often influenced by the subjective lens of the individual delivering it—which undermines the core intent of both the Planning and Building Acts. The result is frequent delays, increased costs to the industry, and a growing sense of confusion and mistrust toward the statutory authorities responsible for guiding the process.

A common example is where a residential development proposal is submitted directly to the local authority for a Material Change of Use assessment under the Planning Scheme. Planning matters are addressed in isolation, with no regard for building compliance issues. By the time the proposal reaches a Building Certifier for assessment under the Building Act, substantial investment may already have been made in architectural design, engineering,

and surveying—only to discover fundamental non-compliances, such as insufficient fire separation due to boundary proximity or inadequate stormwater management stemming from incompatible roof drainage design. These disconnects highlight the inefficiencies and risks caused by complex assessment pathways.

In a comparable manner, the intricate interplay between the two Acts can inadvertently lead to non-compliance. Applicants may unknowingly continue without fulfilling all necessary requirements, particularly when the responsibilities of assessment managers and referral agencies are not clearly communicated. This scenario underscores the need for a more streamlined and transparent assessment process.

If professionals, building certifiers, planners, and local governments frequently struggle to align and interpret requirements, it is unreasonable to expect the general public to understand when approval is needed. This fuels the rise in unlawful building work, particularly in areas where low risk but regulated building work is misunderstood or overlooked entirely.

Possible Recommendations

The following recommendations are simply ideas drafted as practical solutions for a full legislative reform of the issue identified above or crutches to support the current situation.

Streamlined Gateway via Private Building Certification - unified assessment framework.

All Development Applications involving Building Work (proposal or for construction) should first be submitted to a Private Building Certifier as the initial gateway. The certifier would then:

- Determine all development types required, their category and assessment levels;
- Determine what, if any referral agency assessments are required under the Planning Act;
- Direct the applicant on assessment results and request applicant to provide necessary approvals (allows for alternative design to avoid if possible)
- Ensure consistency of categorisation between building and planning triggers.
- Refer Appendix A below for considerably basic suggestions on legislative change proposal.

This approach could:

- Minimise conflict between Assessment Managers;
- Provide a clear single point of contact for applicants and owners;
- Provide clarity on referral and assessment pathways;
- provide consistent decision timeframe expectations for industry for determining requirements.

Integrated Assessment Portal and Mapping Tool

A state government-hosted integrated assessment platform could be developed. It would:

- Overlay local planning scheme overlays, zoning, bushfire/flood constraints, and building work triggers as well as state interests mapping;
- Guide users (public and professionals) through the correct development pathway—building and planning;
- Generate a checklist of requirements for each proposed activity.

Dedicated Planning-Building Interface Training and Guidance

Create joint training modules and detailed guideline documents for certifiers and planners both private and government based:

- Focusing on categorisation of development types and encouraging consistency across regions and between roles;

- Clarifying referral and overlapping development approval responsibilities, expectations and limitations;
- Refine and clarify definitions to aid in reducing overlaps and provide precedence for consistent decision-making across regions.
- Refine and revise Development assessment rules to include the current framework process steps of Building Certification and how it is supposed to align the same as any other Development Application process, currently the guidance document is silent on anything Building Work related.

Develop Comprehensive Educational Resources & Marketing:

Create accessible materials and guidance resources for professionals and the public to demystify the development assessment process. These resources should interpret the steps involved, the roles of various entities, and the requirements under both Acts in intricate detail and include many common scenarios drawn from data of most common applications submitted in Qld as well as most common offence data from QBCC.

Include marketing material for public to raise awareness of the entire process. As it stands there are 2 arms of the process which are required to complete the body. Planning and Building—two pillars of the construction industry, each essential yet distinct. One cannot function effectively without the other. Planning shapes how our communities look, feel, and operate. It influences our emotional connection to places and how we experience our neighbourhoods, and public spaces.

Building, on the other hand, safeguards the physical reality of those communities. It ensures that the structures we inhabit are safe, durable, and fit for purpose. It protects life, health, and wellbeing—making certain that what is designed can withstand time, weather, and human use.

In this way, planning speaks to the feeling of place, while building speaks to the physicality. One is conceptual; the other structural. Both must be in harmony to create communities that are not only liveable and beautiful, but also safe and enduring.

Enhance Communication and Collaboration:

Foster improved communication channels between planning authorities and building certifiers. Regular inter-agency meetings and shared databases can facilitate the exchange of information and promote cohesive assessments. Encouraging and supporting collaboration between professions rather than fragmented and silo-based processes.

Conclusion

By implementing these recommendations, the development assessment process in Queensland can become more streamlined, transparent, and conducive to compliance. Such improvements are essential for fostering a productive construction sector that effectively meets the state's infrastructure and housing needs.

I welcome the Commission's work in this area and would be pleased to expand further on any of the points raised.

Appendix A - Offered Amendments to Support a Unified Assessment Framework

To support the establishment of a unified assessment framework, as outlined in the first recommendation above, specific amendments to the Planning Regulation 2017 and the Building Regulation 2021 can be proposed. These amendments aim to streamline the development assessment process by clarifying roles, enhancing coordination, and reducing redundancies.

1. Designate Building Certifiers as Initial Assessment Managers for Building Work

Proposed Amendment:

Amend Planning Regulation Schedule 9, Part 2, to designate private building certifiers as the primary assessment managers for all development applications which require/include proposed building work. This change would position certifiers as the initial point of contact, responsible for determining the need for further referrals or assessments.

Rationale:

By centralising the initial assessment with building certifiers, applicants can receive clearer guidance on requirements, reducing confusion and potential missteps in the assessment process.

2. Clarify Referral Agency Roles and Triggers

Proposed Amendment:

Revise Planning Regulation Schedule 10 to provide a consolidated and simplified list of referral triggers, clearly defining when and why each referral agency's input is required. Additionally, establish a standardised referral process to be initiated by the primary assessment manager (i.e., the building certifier).

Rationale:

Simplifying and clarifying referral triggers will aid in reducing delays and ensuring that all necessary assessments are conducted efficiently and transparently.

3. Review and Refine Development Assessment Rules

Proposed Amendment:

Revise Development Assessment rules to align with the amendments above so that they clearly section out how an application involving building work requires a separate pathway via Private Building Certification

Rationale:

Outlining step by step process to include above amendments to simplify one main assessment manager for applications including Building Work will reduce confusion causing delays and provide efficiency in transparency.