



# Performance based planning in Queensland: A case of unintended plan-making outcomes



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## ABSTRACT

Performance based planning (PBP) is purported to be a viable alternative to traditional zoning. The implementation of PBP ranges between pure approaches that rely on predetermined quantifiable performance standards to determine land use suitability, and hybrid approaches that rely on a mix of activity based zones in addition to prescriptive and subjective standards.

Jurisdictions in the USA, Australia and New Zealand have attempted this type of land use regulation with varying degrees of success. Despite the adoption of PBP legislation in these jurisdictions, this paper argues that a lack of extensive evaluation means that PBP is not well understood and the purported advantages of this type of planning are rarely achieved in practice. Few empirical studies have attempted to examine how PBP has been implemented in practice. In Queensland, Australia, the Integrated Planning Act 1997 (IPA) operated as Queensland's principal planning legislation between March 1998 and December 2009. While the IPA did not explicitly use the term performance based planning, the Queensland's planning system is widely considered to be performance based in practice. Significantly, the IPA prevented Local Government from prohibiting development or use and the term zone was absent from the legislation. How plan-making would be advanced under the new planning regime was not clear, and as a consequence local governments produced a variety of different plan-making approaches to comply with the new legislative regime. In order to analyse this variation the research has developed a performance adoption spectrum to classify plans ranging between pure and hybrid perspectives of PBP. The spectrum compares how land use was regulated in seventeen IPA plans<sup>1</sup> across Queensland.

The research found that hybrid plans predominated, and that over time a greater reliance on risk adverse drafting approaches created a quasi-prohibition plan, the exact opposite of what was intended by the IPA. This paper concludes that the drafting of the IPA and absence of plan-making guidance contributed to lack of shared understanding about the intended direction of the new planning system and resulted in many administrative interpretations of the legislation. It was a planning direction that tried too hard to be different, and as a result created a perception of land use risk and uncertainty that caused a return to more prescriptive and inflexible plan-making methods.

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## 1. Introduction

Critics of traditional prescriptive systems of plan creation—such as zoning and community plans, argue that this approach lacks flexibility and creativity, particularly in the face of a fast moving and highly technological urban environment. The alternative, performance based planning (PBP), has been often advocated as a panacea

to the static nature of prescriptive planning—allowing planners to respond flexibly to sets of desired characteristics as opposed to rigidly enforced criteria. This is not merely a theoretical issue, but has continually been attempted on a trial basis around the world. A number of jurisdictions, most notably in New Zealand, and the state of Queensland in Australia have chosen to adopt and implement PBP approaches to their planning legislation.

The introduction of PBP regulation was one of the critical vehicles for the delivery of a comprehensive reform of the Queensland planning system that commenced in the 1990's. It represented a significant regulatory shift from what was principally a prescriptive planning system, largely viewed as inflexible and inefficient, stifling innovation, and unable to keep pace with an changing community-

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<sup>1</sup> Called planning schemes in Queensland.

attitudes with respect to the environment. The agenda was also underpinned by broader micro-economic reform imperatives that demanded greater accountability and efficiency (England, 2004).

PBP is a form of planning regulation that is not well understood and the purported advantages of this type of planning are rarely achieved in practice (Baker et al., 2006). In theory, the suitability of a land use activity is not pre-determined in a pure interpretation of PBP. Instead, the characteristics of the activity (e.g., built form, noise, impacts on infrastructure) are primary determinants of suitability. Locational land use flexibility therefore prevails over locational certainty. This pure interpretation is at odds with traditional planning regulations which are typically based on segregating land use zones and other prescriptive measures that determine – in advance – land use suitability and which provide a degree of certainty about likely outcomes, particularly in terms of land use and built form.

The Integrated Planning Act 1997 (IPA) was the key legislative output of a reform agenda and operated as Queensland's principal planning legislation between March 1998 and December 2009. The Purpose of the IPA was to 'seek to achieve Ecological Sustainability'. In advancing the Act's purpose, plans were intended "to provide a comprehensive framework for managing the effects of development" (Queensland Government, 1999, 19). The implementation of IPA meant that approximately 125 local governments had to prepare a new planning scheme. While the IPA did not use the term Performance Based Planning, the Queensland's planning system is widely considered to be performance based in practice (Baker et al., 2006; Steele, 2009a,b; Steele and Ruming, 2012).

Flexibility in terms of planning scheme formats and content comprised the cornerstone of plan-making requirements under the IPA, where plan-making focused on function over form (Yearbury, 1998). This was intended to provide maximum flexibility in terms of how planning and development was regulated at the local level (Yearbury, 1998). Significantly, the IPA prevented local governments from absolute or partial prohibition of development or use because "planning schemes are meant to be dynamic documents that are responsive to changing circumstances, rather than absolute pronouncements of policy enshrined in regulation" (Queensland Government, 1999, 42–43).

The term "zone" was also a notable omission from the IPA. This signified a monumental departure from the previous planning system—and from Australian planning regulation in general. However, as will be discussed further, despite not being able to prohibit development or use, this did not prevent local governments from regulating the use of premises. This tension between the intent of the act to maximize flexibility and the desire of local governments for certainty was to be an important factor in Queensland's PBP experience.

Due to this essential tension, the IPA was subject to review during 2005 and 2007. The review reflected widespread dissatisfaction with the planning system, a system where decision-making uncertainty prevailed, plans were unwieldy and complex as local governments developed means to circumvent the flexibility intended for IPA plans, and as a result development costs and timeframes were increasing. The IPA was ultimately replaced with the Sustainable Planning Act 2009 (SPA) in December 2009. Significantly, the SPA introduced limited prohibitions to increase certainty in the development process. Meurling (2009) described this change as an erosion of the PBP system established under the IPA. It also brought to an end the experimental plan-making that had been fostered under the IPA and replaced it with more rigidly controlled compulsory planning scheme components for local government.

Few empirical studies have attempted to examine how PBP has been implemented in practice. The extent to which performance based land use planning was embraced in Queensland's plans dur-

ing the IPA period has not been analysed. Therefore, the purpose of this paper is to document the Queensland experiment with PBP by examining how land use was managed in plans. Our primary focus is to examine the key factors that influenced the methods of land use management and the level of planning flexibility that was adopted in practice.

We begin with a review of the PBP literature. This includes a description of the various interpretations, purported advantages, and the methods of adoption for this type of planning regulation. Second, we provide an overview of the pre-IPA planning system, the reform goals, the key concepts of the IPA, and plan-making guidance; and we present a spectrum of land use management regulations in the context of local government plans. Finally, it is argued that the IPA and in particular the administrative interpretation of the act resulted in a range of unintended consequences that ran counter to the reform agenda and the vision of those who championed planning system change. In addition, the attempted implementation of performance based land use planning had opposite effect than those envisaged. Instead of increased flexibility local plans relied on prescriptive spatial land use distribution and in many cases very blunt solutions to discourage certain activities in order to maintain high levels of decision-making certainty and control.

## 2. Performance Based Planning

There is considerable variation and confusion in the literature about PBP, including the terminology itself (Baker et al. (2006) confirm the broad use of the term and the range of uses). As a consequence it is important to discuss this range of interpretations, and arrive at an appropriate description prior to an analysis of its application in the Queensland context.

The descriptions of PBP within the literature vary considerably, as would be expected from a profession that has a primarily local jurisdictional function, and that is context and locality specific in practice. As a form of regulation, PBP can be described as a single or multiple elements of a plan or more broadly conceived as a fundamental component or basis of an entire planning system. These variations in approach, particularly in the scale and means of implementation go some way towards explaining the lack of cohesive terminology, understanding and limited amount of research dedicated to this type of planning. In terms of terminology, Kendig (1980, 1982) was one of the earlier scholars in this field and used the term 'Performance Zoning'. Porter et al. (1988) used the term 'Flexible Zoning' to describe a variety of flexible planning regulations including Performance Zoning, Impact Zoning and Points Systems. New Zealand adopted the term 'Effects Based Planning' and Queensland, Australia uses the term 'Performance Based Planning'.

The origins and drivers of PBP approaches include: a reaction to the rigidity of prescriptive zoning regulations (see for example Kendig, 1980; Porter et al., 1988; Juster, 1997; Marwedel, 1998; Baker et al., 2006); the mitigation of impacts through quantifiable performance standards, in particular industrial related impacts, building codes, and project rating systems (see for example Porter et al., 1988; Marwedel, 1998; Baker et al., 2006); an evolutionary component of ex- ante project evaluation and environmental impact assessment (see for example Meshenberg, 1976; Babcock, 1979; Porter et al., 1988); and as a method to assist in delivering New Public Management (NPM) and Sustainable Development/Environmental reform agendas (see for example England, 2004; Ericksen et al., 2004).

Despite the different terminologies, common themes for this type of planning regulation are evident with respect to managing land use. Normatively this type of planning regulation does not rely

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