

Our ref: DGC15/1477

Your ref: 11.1.13C

23 NOV 2015



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Mr Jim Pearce MP
Chair
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Pearce

Thank you for your letter of 16 November 2015 about consideration of the Planning Bills by the Infrastructure, Planning and Natural Resources Committee (the Committee) and the forward program of dates for the Committee's work.

I confirm the appropriate Departmental officer for the Committee to contact on this matter is Ms Megan Bayntun, Director, Act Review Team, in the Department. Megan's contact details are provided below.

In response to your information request, the following documents are enclosed:

- a written summary of the differences between the provisions of the Government's Planning Bills and the Private Members' Bills (*Key differences between the Government's Planning Bills and the Private Members Bills*) and;
- a list of the submitters to the Department's consultation on the Government's Planning Bills (*Submitter Names and Addresses – Planning Bills Consultation Sep Oct 2015*).

I confirm Departmental officers will be available to brief the Committee on the Bills on Monday 30 November 2015 and await confirmation of the time of the briefing.

If you require further information, I encourage you to contact Megan on 3452 6822 or by email at megan.bayntun@dilgp.qld.gov.au.

Yours sincerely



Frankie Carroll
Director-General

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Key differences between the Government's Planning Bills and the Private Members Bills

Background

On 12 November 2015, the Honourable Jackie Trad MP, Deputy Premier, Minister for Transport, Minister for Infrastructure, Local Government and Planning and Minister for Trade, introduced the three bills to the Queensland Parliament for consideration. The three bills (Planning Bills), intended to replace the *Sustainable Planning Act 2009*, are:

- The *Planning Bill 2015*
- The *Planning and Environment Court Bill 2015*
- The *Planning (Consequential) and Other Legislation Amendment Bill 2015*.

On 4 June 2015, Mr Tim Nicholls MP introduced three Private Members Bills (Private Members Bills), also intended to replace the *Sustainable Planning Act 2009*. These are:

- The *Planning and Development (Planning for Prosperity) Bill 2015*
- The *Planning and Development (Planning Court) Bill 2015*
- The *Planning and Development (Planning for Prosperity – Consequential Amendments) and Other Legislation Amendment Bill 2015*.

The Planning Bills and Private Members Bills have been referred to the Infrastructure, Planning and Natural Resources Committee for consideration.

On 16 November 2015, the Committee requested that the Department of Infrastructure Local Government and Planning (the department) provide a written briefing summarising the difference between the provisions of the Planning Bills and the Private Members Bills.

Queensland's planning framework

While key elements and the structure are renewed and regenerated, the Government's Planning Bills and the Private Members Bills remain similar to the *Sustainable Planning Act 2009* in many ways and will be familiar to many users.

- There are still State planning instruments and local planning instruments, and local instruments still need to reflect state interests. The Minister still approves these instruments and, for local instruments, continues to set the rules for the process that must be undertaken by local governments to make or amend their planning schemes.
- There is still a development assessment system which is an integrated one that has its scope, and the powers to perform function that are needed by the various players, still set in the Act. However, the process details will be found in the development assessment rules, which is a separate statutory instrument. The State Assessment and Referral Agency will continue to be the assessment manager or referral agency for development applications where the State has a jurisdiction.
- There are still dispute resolution processes including the Planning and Environment Court (which will be set up in its own Act) and a system for low cost speedy dispute resolution (currently named the Building and Development Dispute Resolution Committee, but to be renamed the Development Tribunal).
- There is still a hierarchy of regulatory instruments with the pre-eminent legislation establishing the system, roles and responsibilities; the regulation under the Act setting regulatory matters; and then statutory

instruments, like the rules for certain processes, which are required to be created by the Act and are empowered by the regulation.

Key Differences in the Planning Bills

The below tables summarise key differences between provisions of the Government's Bills and the Private Members' bills. Technical and other non-substantial drafting changes to improve clarity and ensure the intended effect of provisions in the Bills have not been remarked on.

Comments have not been provided for the Consequential Bills because any differences related to planning reform are to give effect to the provisions of the Government's Bills and the Private Members Bills.

Chapter	Topic	Planning Bill	Private Members Planning Bill
ONE Preliminary	Purpose	The purpose of the Bill is focussed on facilitating ecological sustainability; and defining that term including in relation to resilient communities [s3(1)-(3)]	The purpose of the Bill is to facilitate Queensland's prosperity through ecologically sustainable development by achieving an optimum balance between economic growth, environmental protection and community wellbeing.
	Advancing the Act's purpose	The Bill includes provisions that describe advancing the Act's purpose, and further refines them to include such matters as: <ul style="list-style-type: none"> valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition; conserving places of cultural heritage significance; housing affordability; and encouraging investment and economic resilience [s3(5)]. 	Advancing the Act's purpose and What advancing the Act's purpose includes are omitted as these provisions duplicate other legislative and standard statutory interpretation requirements (i.e. <i>Acts Interpretation Act 1954 s14A</i>).
	Planning system	SARA is specifically mentioned as part of the development assessment system.	SARA is not specifically mentioned in the Bill.
TWO Planning	Minister's rules and guidelines	The Bill provides a process for public consultation for the Minister's guidelines and rules, equivalent to the process for making or amending a State planning policy, to ensure accountability and transparency [s17(2)].	No provision is made for public consultation for the Minister's guidelines and rules.
		The Bill includes a minimum period for public notification for a local planning scheme of 40 days to enhance community engagement [s18(5)(i)].	No specific minimum timeframe for public notification in plan making is included in the Bill.
	Compensation for natural hazards	The Bill includes compensation arrangements for natural hazards which offer some protection to local government from claims where the planning change is made to reduce a	The Bill retains the status quo in SPA with respect to claims for compensation relating to natural hazards, however the provisions have been reworded to improve readability.

Chapter	Topic	Planning Bill	Private Members Planning Bill
		<p>material risk of serious harm to persons or property on the premises from natural events or processes; and is made as required under Minister's rules prescribed by regulation.</p> <p>The Minister's rules will be directed at establishing the requirements of good faith, appropriately qualified persons and using the best available information, as well as a requirement that the local government assess feasible alternatives for reducing the risk, including imposing conditions on development approvals [s30(4)(e) & (5)].</p>	
	State infrastructure designation	<p>The State infrastructure designation process has been adjusted to ensure that the infrastructure designation guidelines and rules must be made or amended following a consultation process equivalent to the process for making and amending a State planning policy, to enhance accountability and transparency [s36(6)].</p> <p>Provisions are also included for the State as designator to have regard to the written submissions of any local government in considering whether to make or amend a designation.</p>	No provision is made for public consultation for the Minister's guidelines and rules.
	Local government infrastructure designation	The Bill provides for a local government infrastructure designation process. The local government's designation process mirrors State designation arrangements as the most effective way to support local government's using this planning tool [ss35-42].	The option of designating is not available to local governments.
	State planning instruments	The Bill includes a 60 day minimum public notification period for making a regional plan and 30 business days for amending a regional plan. All other State planning instruments have a public notification timeframe of 40 business days for making an instrument and 20 business days for amending an instrument.	<p>All State planning instruments have a public notification timeframe of 40 business days for making an instrument and 20 business days for amending an instrument.</p> <p>No specific timeframe for making or amending a regional plan is included in the Bill.</p>
	Local planning instruments – making and amending and review	The Bill includes statutory requirements for reviewing local government planning schemes and infrastructure plans [s25]. This includes a prescribed minimum public notification period of 40 business days for a proposed planning scheme and 20 business days for a proposed	<p>No statutory timeframes for making or amending a local planning instrument are prescribed in the Bill.</p> <p>There is no specified timeframes for reviews of local planning schemes.</p>

Chapter	Topic	Planning Bill	Private Members Planning Bill
		<p>amendment.</p> <p>The Bill also provides for a 10 yearly reviews of local planning schemes.</p>	
	Local planning instruments – contents	The Bill includes the requirement that strategic outcomes along with measures to facilitate their achievement are included in planning schemes.	No specific reference to strategic outcomes is included in the Bill.
THREE Development assessment	Statement of reasons	The Bill introduces a requirement for assessment managers and referral agencies (including SARA) to publish reasons for their decisions [ss56(7), 63(7) & 83(8)].	There is no requirement for an assessment manager or referral agency to publish reasons for approving an application. However the reasons for refusal must be stated on the decision notice.
	Names of categories of assessment	Assessment categories for assessable development in the Bill are described as 'code' and 'impact'.	Assessment categories for assessable development in the Bill are described as 'standard' and 'merit'.
	Public notification of applications	All impact assessable development is to be publicly notified to enhance community engagement, accountability and transparency measures [s53].	Public notification is decoupled from a category of assessment. The Bill does not mandate public notification for any particular category of development or assessment – instead it provides that the categorising instrument may identify if notification is required.
	DA Rules	The Bill provides for a process of consultation for the Minister's development assessment rules, equivalent to the process for making or amending a State planning policy [s68(3)].	No specific provision for consultation on the Minister's development assessment rules is included in the Bill.
	Call-ins	The Bill includes natural justice arrangements for seeking representations about a call-in before the Minister decides to call in an application [s101].	There is no requirement for submissions to be made before a decision on calling in an application in the Bill.
	Public notification	The Bill includes a minimum period for public notification for certain development applications [s53(4)]	The Bill does not specify public notification timeframes.
FOUR Infrastructure	LGIP	The Bill extends the current statutory timeframe for the making of a Local Government Infrastructure Plan (LGIP) [s301].	The Bill provides a cut-off date of 1 July 2016.
	Infrastructure charges	The Bill introduces automatic indexing of infrastructure charges [s111(2)].	The Bill provides that the Minister may change the amount of a maximum adopted charge and limited the change to not more than the amount equal to the amount of the maximum adopted charge at the start of the financial year multiplied by the 3 year moving annual

Chapter	Topic	Planning Bill	Private Members Planning Bill
			percentage increase in the PPI index for the period of 3 years ending at the start of the financial year.
FIVE Offences and enforcement	Inspectors	The Bill introduces investigation powers for the chief executive [Chapter 5 Part 6].	Investigative powers for the chief executive were not specifically provided for in the Bill. Instead a person nominated by the chief executive, as an enforcement authority, could be given the investigative functions provided for under another Act.
	Fines	The Bill includes a provision identifying when a fine is payable to local government [s178].	An equivalent clause has not been included in the Bill.
SEVEN Miscellaneous	Public access	The Bill provides that a regulation may prescribe detail in relation to requirements about public access to documents [Chapter 7 Part 3].	The Bill does not provide for a regulation to prescribe detail in relation to requirements about public access to documents.

Key Differences in the Planning and Environment Court Bills

Part	Topic	Planning and Environment Court Bill	Private Members Court Bill
FOUR Powers and procedure (general)	ADR registrar's powers to hear and decide	The Bill provides that an ADR (alternative dispute resolution) registrar may hear and decide a proceeding and make an order or direction, including a final judgement or order, if directed by the Planning and Environment Court [s23].	The Bill provides that an ADR registrar may hear and decide a proceeding and make an order or direction, including a final judgment or order, if directed by the Planning and Environment Court or if: <ul style="list-style-type: none"> (a) the proceeding is within the Development Tribunal's jurisdiction and the chief executive ends the proceeding without establishing an appropriate tribunal; or (b) the proceeding relates to a minor change to a development application or development approval [s22].
SIX Costs	Costs	The Bill provides that each party pays its own costs in Planning and Environment Court proceedings except in limited circumstances, for example proceedings that are frivolous, vexatious or for an improper purpose [ss59-61].	The Bill establishes that costs of a Planning and Environment Court proceeding are in the Court's discretion, with some exceptions [ss59-62]. However, each party pays its own costs if: <ul style="list-style-type: none"> (a) parties participate in an early ADR process and the proceeding is resolved during that process or soon afterwards (unless the Court orders otherwise) [s61]; or (b) an ADR registrar hears and decides the proceeding [s62(4)].
	Enforcement proceeding costs	If the Planning and Environment Court makes an enforcement order against a person, it may order costs against the person [s61(1)].	Costs follow the event in Planning and Environment Court proceedings for enforcement orders, unless the Court orders otherwise [s62(1)].
	Security for costs	An equivalent provision is not included in the Bill.	Provides that the Court may order a party that started a proceeding to give security for costs [s58].
	Costs orders against third parties	An equivalent provision is not included in the Bill.	Establishes that the discretion to award costs includes the power to order costs against someone who has an interest in a proceeding but is not a party to the proceeding [s59(2)].

Key Differences in the Consequential Amendment Bills

Act	Topic	Consequential Amendment Bill	Private Members Consequential Amendment Bill
<i>Coastal Protection and Management Act 1995</i>	Land surrender (Part 14)	<p>The Bill re-establishes a land surrender requirement process under the <i>Coastal Protection and Management Act 1995</i> but separates it from the development approval process.</p> <p>The arrangement has been adjusted to include an opportunity for the owner to make submissions in response to the land surrender notice. Time limits have been added to the arrangements, and it is noted that a person may seek judicial review.</p>	The Bill omits provisions about land surrender conditions as redundant due to the establishment and operation of SARA.
<i>Vegetation Management Act 1999</i>	Vegetation clearing	The Bill does not amend s22A such that the determination remains solely with the chief executive administering the <i>Vegetation Management Act 1999</i> .	The Bill amends section 22A of the <i>Vegetation Management Act 1999</i> so that the chief executive administering the Planning and Development (Planning for Prosperity) Act, as well as the chief executive administering the <i>Vegetation Management Act 1999</i> , can be satisfied a vegetation clearing application is for a relevant purpose under the section.