



Your REF: 11.1.13C
Our REF: SP – Submissions for State Government Bills

12 February 2016

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

RE: Questions on Notice - Submission on the Planning Bill 2015

Thank you for the invitation to make a further contribution to the Planning Bill by responding to the questions raised by the Crime and Corruption Commission in their submission (no 72) to the Committee. At the recent public hearing in Mackay, the Committee advised that the Crime and Corruption Commission has raised concerns that *'Local governments are vulnerable to corrupt conduct due to the diverse functions they undertake, the substantial amounts of money involved in their functions, and the considerable authority and decision-making powers their employees possess'* (Sub 72 Pg. 1).

The committee asked Council to respond to the concerns that planning related corruption and outline steps taken to reduce potential risks through answering the questions (question 2-6 below). In addition, the Committee requested a response to question 1 below:

- 1. *How much would it cost and how long would it take for your council to provide in writing a list of all the requirements that apply to a parcel of land stemming from the zoning of the land, any overlays and local plans, relevant codes, plans of development and conditions contained in existing approvals.***

Mackay Regional Council maintains an on-line mapping system which is freely available to the public. The mapping system can produce a "Property Report" instantaneously by clicking on a property and the report icon. An example report is provided as an attachment to this letter. This document is not legally binding and it is viewed as a customer service.

All decision notices approved since the commencement of the *Sustainable Planning Act 2009* (SPA) are available on PD On-line at http://www.mackay.qld.gov.au/business/planning_and_development/online_services/terms_and_conditions in accordance with Chapter 9, Part 6 '*Public access to planning and development information*' of SPA.

If landowners require this information in a legally binding format, a customer can request a Planning and Development Certificate which is prepared in accordance with s738 to s742 of the SPA. These certificates contain prescribed information and can be

prepared by degree of complexity from 'limited' to 'standard' and 'full' requirements. A certificate is subject to a fee and a statutory timeframe. Table 1 sets out these matters.

Table 1 – Details of planning and development certificates

Type	SPA	Fee	Inclusions	Time
Limited Certificate	S738	\$ 265	<p>(a) a summary of the provisions of any planning scheme or charges resolution applying specifically to the premises;</p> <p>(b) if any of the State planning regulatory provisions apply to the premises—a description of the provisions that apply;</p> <p>Note— A State planning regulatory provision (adopted charges) may apply to the premises.</p> <p>(c) a description of any designations applying to the premises.</p>	5bd
Standard certificate	S739	\$ 830	<p>In addition to the above:</p> <p>(a) a copy of every decision notice or negotiated decision notice for a development approval given under this Act or repealed IPA that has not lapsed;</p> <p>(b) a copy of every deemed approval notice relating to the premises, if the development approval to which the notice relates has not lapsed;</p> <p>(c) a copy of every continuing approval mentioned in repealed IPA, section 6.1.23(1)(a) to (d);</p> <p>(d) details of any decision to approve or refuse an application to amend a planning scheme made under the repealed LGP&E Act, section 4.3, including any conditions of approval;</p> <p>(e) a copy of every compliance permit or compliance certificate in effect at the time the standard planning and development certificate is given;</p> <p>(f) a copy of any information recorded for the premises in the infrastructure charges register;</p> <p>(g) details of any permissible changes to a development approval given under this Act or minor changes made to a development approval given under repealed IPA;</p> <p>(h) details of any changes to a compliance permit or compliance certificate;</p> <p>(i) a copy of any judgment or order of the court or a building and development committee about the development approval or a condition included in the compliance permit or compliance certificate;</p> <p>(j) a copy of any agreement to which the local government or a concurrence agency is a party about a condition of the development approval;</p> <p>(k) a copy of any infrastructure agreement applying to the premises to which the local government is a party or that it has received a copy of under section 673;</p> <p>(l) a description of each amendment, proposed to be made by the local government to its planning scheme, that has not yet been made at the time the certificate is given.</p>	10bd
Full Certificate	S740	\$ 1,715	<p>In addition to the above:</p> <p>(a) if there is currently in force for the premises a development approval or a compliance permit containing conditions (including conditions about the carrying out of works or the payment of money, other than under an infrastructure agreement)—a statement about the fulfilment or non-fulfilment of each condition, at a stated day after the day the certificate was applied for;</p> <p>(b) if there is an infrastructure agreement to which the local government is a party—</p> <p>(i) if there are obligations under the agreement that have not been fulfilled—details of the nature and extent of the obligations not fulfilled; and</p> <p>(ii) details of the giving of any security and whether any payment required to be made under the security has been made;</p> <p>(c) advice of—</p> <p>(i) any prosecution for a development offence under this Act or repealed IPA in relation to the premises of which the local government is aware; or</p> <p>(ii) proceedings for a prosecution for a development offence under this Act or repealed IPA in relation to the premises of which the local government is aware.</p>	30bd

In summary, the provision of information to the public is well catered for in the current framework and Council's on-line services.

However, if these processes were to change in a wholesale manner including IT systems and process, Council has estimated that the changeover cost would be in the vicinity of \$600,000. This cost will depend on the time required for transition and support provided by the Department (including The detail on how financial support would be made available to Local Government have not yet been provided.

2. What constitutes 'minor or inconsequential' effects of a development when determining whether an exemption certificate applies (Section 46(3)(b)(i) PB; s. 41(3)(b)(i) PDB)

Section 46 (3) (b) (i) of the Planning Bill states:

*(b) any of the following apply—
(i) the effects of the development would be minor or inconsequential, considering the circumstances under which the development was categorised as assessable development;*

The Mackay City Planning Scheme defines minor work where no application is required:

“Minor Works” are works for which a development application for planning approval is not required and which comply with the following criteria:

(i) for any industrial use: building work which will increase the gross floor area of an existing building by no more than 75m² or 10%, whichever is the lesser, where the Total Use Area, as defined in the Transport Network Contribution Policy, is not increased from a previous MCU development approval; or*

*(ii) for any other use: building work which will not increase the gross floor area of an existing building by no more than 25m² or 10% whichever is the lesser. * 75m² refers to the total increase in floor area at any time (including more than one extension) since a previous MCU development permit.*

The draft Mackay Region Planning Scheme also defines minor work as set out mandatorily by the Queensland Planning Provisions:

Minor building work: An alteration, addition or extension to an existing building where the floor area including balconies, is less than 5% of the building or 50m², whichever is the lesser.

Thus, any change which satisfies the above definitions would not require a permit (and therefore an exemption) in any case. Therefore, s46 (3) (b) (i) must necessarily refer to a change which is greater than the definition of minor for it to be assessable in the first instance under s46 (1).

The SPA also provides guidance to the definition of a minor change for development under s350. The section refers to development which is not 'substantially different' which is a subjective phrase similar to 'inconsequential' used in s46. Matters that

Council may consider when assessing if a change or proposal constitutes an inconsequential or not substantially different matter may involve the following:

- a) Does the proposal impact any of the other planning provisions? For example, would an increase in floor area, parking or other aspect of assessable development result in removal or another aspect of development that is necessary such as parking, access and circulation areas, minimum open space areas.
- b) Does the proposal comply with the required codes? For example, would the proposal result in development that exceeds height, setbacks and site coverage allowance?
- c) Does the proposal impact council assets? For example, would the proposal be clear of council assets and easements? Does it involve new council assets such as connections or access, or alter the existing drainage paths?
- d) Does the proposal involve development that will make a material difference when viewed from the street or by the community?

If the response to the above questions is 'yes', then Council may consider that the proposal should follow due process. Where the response is 'no', then Council may consider an exemption certificate may be warranted. Other cases may include where the zoning is no longer appropriate. Examples include the sale of church or school buildings in the Community Facilities or Public Purpose zone in a residential area, proposed to be converted to residential uses. In some circumstances, Council may agree that an impact assessable application is not required as proposal is entirely compatible with surrounds.

In summary, Council views this provision as a last resort to be used in exceptional circumstances. To avoid situations of uncertainty we suggest the department compile a guideline for consideration by councils on the use of this provision.

3. *Removing an appropriately qualified person from an alternative assessment managers list (Section 48 PB; s. 43 PDB)*

Council understands that the Commission is requesting comment on the option to remove s48 entirely or limit the provision to that of s246 of the SPA. The inclusion of this section and the reference to a list is confusing given the desire for the new act to be simplified. Section 48(3) of the planning bill is unclear. Matters which have not been discussed with the stakeholders include:

- Is the appropriate qualification one of planning or engineering or both?
- How are the appropriate qualifications determined and by who?
- Does the list need approval from the Minister?
- How is responsibility apportioned in the case of an appeal? Who is ultimately the respondent?
- The list would need to be public. Where must it be kept?
- What is the case when the person on the list is no longer solvent or trading and the development is still progressing?
- How are payment of fees dealt with if applications are lodged directly to the person in s48(3)(d)?

It is assumed that Councils will opt in to use these provisions for selected low risk development applications only. A register of assessment managers would be

developed on criteria prepared by the council and maintained based on performance, with the ability by councils to remove an alternative assessment manager based on the criteria. This is a matter where the ambiguity of the bill will require assessment managers to prepare comprehensive policy documents.

4. Whether the creation of an alternative assessment managers list is limited to code/standard assessments (Both sets of Explanatory Notes (PB, p. 59; PDB, p. 50) state 'impact [merit] assessment ... is more appropriately undertaken by a directly accountable body such as a local government')

While the explanatory notes refer to simple applications, the bill does not seem to limit the ability of the listed person to assess impact assessable and complex applications could be assessed by the listed person. The community expects that when submissions are made to Council that in response, decisions are made by elected members. It is inappropriate to have applications decided by third parties where community input is involved and to a degree circumvents democratic process.

5. Negotiating the required fee with an applicant (For a chosen assessment manager. See 'required fee' in schedule 2 PB & PDB)

Council is unclear on the nature of the question but seems to be related to a concern that council as assessment manager or an alternative assessment manager may negotiate the required fee and the fee may be negotiated based on personal interests. Schedule 2 notes the definition of a required fee. Council does not see that negotiation of a prescribed fee as a matter of concern related to potential corruption. A negotiated fee does not relate to an assessment manager's obligations to apply the appropriate assessment of the application.

6. How consent of the owner must be given (Section 51(2) PB; s. 46(2) PDB.)

The section 51(2) which relates to owners consent is not materially different to the SPA and is supported by Council.

You can contact Jaco Ackerman, Manager Strategic Planning on 4961 9129 or jaco.ackerman@mackay.qld.gov.au regarding further clarification of this submission.

Yours faithfully,



Gerard Carlyon
Director Development Services

Attachment: Planning Property Report

Planning Scheme Report

Property Address: 73 Gordon Street, MACKAY

Real Property Description - Plan and Lot No: SP232808/6 **Area:** 2.21200 Ha

Zone - Code: PP

Description: Public Purposes

Planning - Locality: City Centre

Precinct: City South

Affected by Overlay Codes

- Bushfire Management
- Development on Steep Land
- Wetland Communities
- Landscape Character
- Character and Heritage Protection
- Image Corridors
- Acid Sulfate Soils
- Good Quality Agricultural Land
- Airport Safety Zone
- Aviation Facilities Buffer Area
- Airport Noise Exposure
- Airport Obstacle Limitation Surface
- Airport Development Distances
- Flood and Inundation

Affected by Development Codes

- Key Resource Areas
- Commercial and Residential Interface
- High Impact Areas
- Tourist Areas
- Residential Character Areas

