Submission No. 013
11.1.13

LOGAN
CITY COUNCIL

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22 December 2015

Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sir/Madam

LOGAN CITY COUNCIL SUBMISSION – PLANNING BILL 2015 AND PLANNING AND ENVIRONMENT COURT BILL 2015

Thank you for the opportunity to make a submission on the Planning Bill 2015, Planning and Environment Court Bill 2015, Planning and Development (Planning for Prosperity) Bill 2015, Planning and Development (Planning Court) Bill 2015 (the Bills) and supporting instruments.

Logan City Council does not support the Bills. This position is consistent with our earlier letter (11 July 2013) to the then Department of State Development, Infrastructure and Planning (DSDIP) (*see attachment 1*), our submission (17 September 2014) to DSDIP on the draft Planning and Development Bill 2014 (*see attachment 2*), our previous submission (13 July 2015) to the Infrastructure, Planning and Natural Resources Committee on the Development (Planning for Prosperity) Bill 2015 (*see attachment 3*) and our submission (21 October 2015) to the Department of Infrastructure, Local Government and Planning (DILGP) on the Planning Bill 2015 (*see attachment 4*).

Logan City Council will always support change that ensures planning and development leads to improved outcomes and good decisions quickly for both Council and our customers. We have consistently demonstrated our commitment to achieve best practice, however we have not been presented with any compelling arguments in support of the proposed new legislation.

It is our view, and we hope we are wrong, that the Bills and supporting instruments appear to:

- do nothing to enable better strategic planning and higher quality development outcomes;
- create greater uncertainty for the community by complicating the development assessment process and changing terminology for change sake (*see attachment 5*);
- remove certainty from the public participation process;
- create an adversarial planning system that is not open or transparent;
- deliver a planning system that will erode community and investor confidence;
- have created a planning system that is neither practical, logical or modern.

Logan City Council has raised the same concerns with DILGP on numerous occasions only to have these concerns consistently ignored. This frustration is compounded by the separation of the supporting instruments (such as the Development Assessment Rules which contain the most significant changes) form the legislation itself. The full impact of the reform can only be comprehended when the Bill is considered in conjunction with the supporting instruments. Accordingly, we include with this submission (*see attachment 6*) a register of issues and comments which address the Bills and supporting instruments in their entirety.

PTO

If the parliament wishes to proceed with either of the proposed Bills, it is essential that all stakeholders (not just local governments) are appropriately resourced by the State Government in terms of implementation. Queensland's planning legislation has a direct on the economy on a daily basis. We have estimated that the cost to implement the Bills for Council alone is initially estimated to be in excess of one million dollars. Whilst assurances of financial support from the State Government have been given, should this funding not eventuate Council will be forced to pass the reform costs onto our customers by increasing fees and charges.

Council would welcome the opportunity to present to the committee to further explain Logan City Council's concerns with the Bills and supporting instruments. Should you wish to clarify any components contained within this submission, please contact myself

Yours faithfully

Todd Rohl 22December2015
DEPUTY CHIEF EXECUTIVE OFFICER - STRATEGY & SUSTAINABILITY
(on behalf of Chris Rose, Chief Executive Officer)

ATT. 1

11 July 2013

Director-General
State Development, Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002

Attention: Director General - David Edwards

Dear Sir

SUSTAINABLE PLANNING ACT 2009 – PROPOSED PLANNING REFORM

Council is writing to the Department of State Development, Infrastructure and Planning to provide a response to the recent media release issued on 12 June 2013 regarding the proposal of the State Government to create new laws to deliver planning reform.

It is considered by Council that wholesale changes to the current *Sustainable Planning Act 2009* (SPA) and/or a new act will not resolve the challenges Local Governments and Industry currently face, having regard to the reduction of red tape, processes to enable development, the infrastructure charge regimes and a streamlined process for plan making and development assessment. Instead, Council believes that a structured review of the existing legislation would deliver greater benefits to all parties as there are many opportunities available to improve these processes by amendments to the SPA.

Council recognises the key issues with any review would have to ensure:

1. Greater emphasis within the SPA to allow for local government discretion, particularly in cases where the Planning Scheme does not conflict with higher order policies; and
2. Transitional arrangements were established for local governments who are currently in the process of formulating new Planning Schemes.

It is recognised that legislation alone will not be able to address culture change however this is considered critical in terms of moving forward. Council would be happy to meet with you to discuss this matter further.

Logan City has significant potential to contribute to the planning and development industry within South East Queensland and your consideration into this matter is appreciated. If you have any questions please do not hesitate to contact Alisha Swain – Manager Development Assessment

Yours faithfully

Todd Rohl
DEPUTY CHIEF EXECUTIVE OFFICER - STRATEGY & SUSTAINABILITY
(on behalf of Chris Rose, Chief Executive Officer)

ATT. 2

17 September 2014

The Honourable Jeff Seeney MP
Deputy Premier, Minister for State Development, Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002

Dear Deputy Premier,

LOGAN CITY COUNCIL SUBMISSION – DRAFT PLANNING AND DEVELOPMENT BILL AND DRAFT PLANNING AND ENVIRONMENT COURT BILL

I refer to your release for comment of the draft *Planning and Development Bill* and draft *Planning and Environment Court Bill* (the draft Bills) on 1 August 2014. Council has reviewed the draft Bills and provides this submission for your consideration.

As you are no doubt aware, Council made its position clear on the proposed legislation in our letter dated 11 July 2013 to the Department of State Development, Infrastructure and Planning (*see attachment 1*). Council reaffirms its position in this letter, that it does not support the draft Bills.

Logan City Council will always support positive change designed to make planning and development more efficient and cost effective for both Council and our customers. Our recent track record demonstrates our willingness to work tirelessly to achieve best practice in development assessment and planning. However, Council has never seen a compelling argument as to why the proposed legislation is being pursued and we cannot provide a detailed analysis of the draft Bills when key components such as the regulations and decision making rules are not available.

The changes proposed in the draft Bills will have significant time, effort and financial impacts that will be incurred upon Council in order to ensure our planning policies, business, systems and processes align with any proposed legislation and to achieve best practice. It would be appreciated if there is due consideration and recognition of these impacts by the State.

You should note, the cost to implement the draft Bills for Council is initially estimated to be in excess of one million dollars. This estimate has been calculated on the reform we undertook in 2009 in development assessment and the cost of preparing the draft Planning Scheme.

It is our view, some of the good ideas identified in the draft Bills could be integrated into the existing legislation to create the desired reforms. We do not anticipate that the proposed legislation will yield any significant benefits or efficiencies for either Council or our customers. The draft Bills as a whole do not appear to cut red tape and there are aspects that will create uncertainty for both local governments, the development industry and the community alike. In fact, the only certainty is an unnecessary cost burden on Council and our customers in having to adjust to the new provisions.

If the Department of State Development, Infrastructure and Planning chooses to proceed with the draft Bills, please find attached a register of issues and comments which addresses the draft Bills in their entirety *(see attachment 2)*. Should you wish to clarify any components contained within this submission, please contact myself

Yours faithfully

Todd Rohl
DEPUTY CHIEF EXECUTIVE OFFICER - STRATEGY & SUSTAINABILITY
(on behalf of Chris Rose, Chief Executive Officer)

ATT. 3

13 July 2015

Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sir/Madam

LOGAN CITY COUNCIL SUBMISSION – PLANNING AND DEVELOPMENT (PLANNING FOR PROSPERITY) BILL 2015 AND PLANNING AND ENVIRONMENT COURT BILL 2015

Thank you for your invitation of 10 June 2015 to make a submission on the Planning and Development (Planning for Prosperity) Bill 2015 and the Planning and Environment Court Bill 2015 (the Bills). Council has reviewed the Bills and provides this submission for your consideration.

Logan City Council does not support the Bills; this position is consistent with our earlier letter (11 July 2013) to the Department of State Development, Infrastructure and Planning (*see attachment 1*) and our submission (17 September 2014) to the draft Planning and Development Bill 2014 (*see attachment 2*).

Logan City Council will always support positive change designed to make planning and development more efficient and cost effective for both Council and our customers. We have consistently demonstrated our commitment to achieve best practice in development assessment and planning, however we see no compelling argument for new legislation. Specifically:

1) The Bills do not appear to significantly reduce red tape. For example the advertised three categories of assessment are actually five once assessable development is unpacked to Standard and Merit and Merit notifiable.
2) There are aspects of the proposed changes which will create uncertainty for local governments, the development industry and the community. For example, the alternate assessment manager provisions represent a significant change to the development assessment function in Queensland and there is little guidance within the Bill as to how this initiative will be managed.
3) The introduction of new legislation will impose significant time and financial impacts upon Council in terms of changes to planning policies, business processes, services and systems. Customers will also need to adjust to the new provisions, at likely cost and inconvenience. It would be appreciated if there is due consideration and recognition of these impacts by the State.

In addition, we are unable to provide a detailed analysis of the Bills when key components such as the regulations and decision making rules are not available.

Logan City Council fully supports improvement and reform, and believes these agendas can be progressed effectively through the integration of some of the proposed changes into the existing legislation. This will preserve familiar terminology and frameworks and enable the desired efficiencies and benefits to be achieved, with a reduced impost on councils, customers and other agencies.

We include with this submission (see attachment 3) a register of issues and comments which address the Bills in their entirety. Should you wish to clarify any components contained within this submission, please contact myself on

Yours faithfully

Todd Rohl
DEPUTY CHIEF EXECUTIVE OFFICER - STRATEGY & SUSTAINABILITY
(on behalf of Chris Rose, Chief Executive Officer)

21 October 2015

Planning Bills Submission
PO Box 15009
CITY EAST QLD 4002

Dear Sir/Madam

LOGAN CITY COUNCIL SUBMISSION – PLANNING BILL 2015 AND PLANNING AND ENVIRONMENT COURT BILL 2015

Thank you for the opportunity to make a submission on the Planning Bill 2015, the Planning and Environment Court Bill 2015 (the Bills) and supporting documentation. Council has reviewed the Bills and provides this submission for your consideration.

Logan City Council does not support the Planning Bill 2015; this position is consistent with our earlier letter (11 July 2013) to the Department of State Development, Infrastructure and Planning (*see attachment 1*), our submission (17 September 2014) to the draft Planning and Development Bill 2014 (*see attachment 2*) and our submission (13 July 2015) to the Planning and Development (Planning for prosperity) Bill 2015 (*see attachment 3*).

Logan City Council will always support positive change designed to make planning and development more efficient and cost effective for both Council and our customers. We have consistently demonstrated our commitment to achieve best practice in development assessment and planning, however we see no compelling argument for new legislation. Specifically:

1) The introduction of new legislation will impose significant time and financial impacts upon Council in terms of changes to planning policies, business processes and systems. Customers will also need to adjust to the new provisions, at likely cost and inconvenience.

   It would be appreciated if there is recognition and financial assistance to offset these impacts by the State Government, particularly given the lack of articulation by the State Government of the clear benefits likely to be realised through the reforms.

2) The Bills do not appear to significantly reduce red tape. The existing IDAS framework has become more complicated by including provisions for applicants to 'opt-out' of information requests, to 'stop the clock' at any point and for public notification to be carried out at any point. There is significant change to the process without giving consideration to desired outcomes such as a simpler, faster and collaborative process which leads to better planning and development decisions.

3) There are aspects of the proposed changes which will create uncertainty for local governments, the development industry and the community. For example, the alternate assessment manager provisions represent a major change to the development assessment function in Queensland and there is little guidance within the Bill as to how this initiative will be managed.

PTO

The changes to the Development Assessment Rules are the most significant component of the legislative reform. Logan City Council fully supports improvement and reform, and believes these agendas can be progressed more effectively through the integration of some of the proposed changes into the existing legislation. This will preserve familiar terminology and frameworks and enable the desired efficiencies and benefits to be achieved, with a reduced impost on councils, customers and other agencies.

The State Government resources focused towards replacing the *Sustaining Planning Act 2009* would be better spent investigating and delivering a reform agenda that simplifies the regulatory framework for Dwelling houses and domestic building works (such as sheds and extensions). This is an area which has become more complicated over time and has resulted in most local governments spending a large proportion of their development assessment time on applications of low risk and in which little value added. Dwelling houses and domestic building work development applications account for the vast majority of development applications received across the state and a genuine reform of the existing regulatory framework would provide substantial time and cost savings across the industry. Additionally, local governments would be left to focus their attention on the remaining larger developing applications in which value can be added.

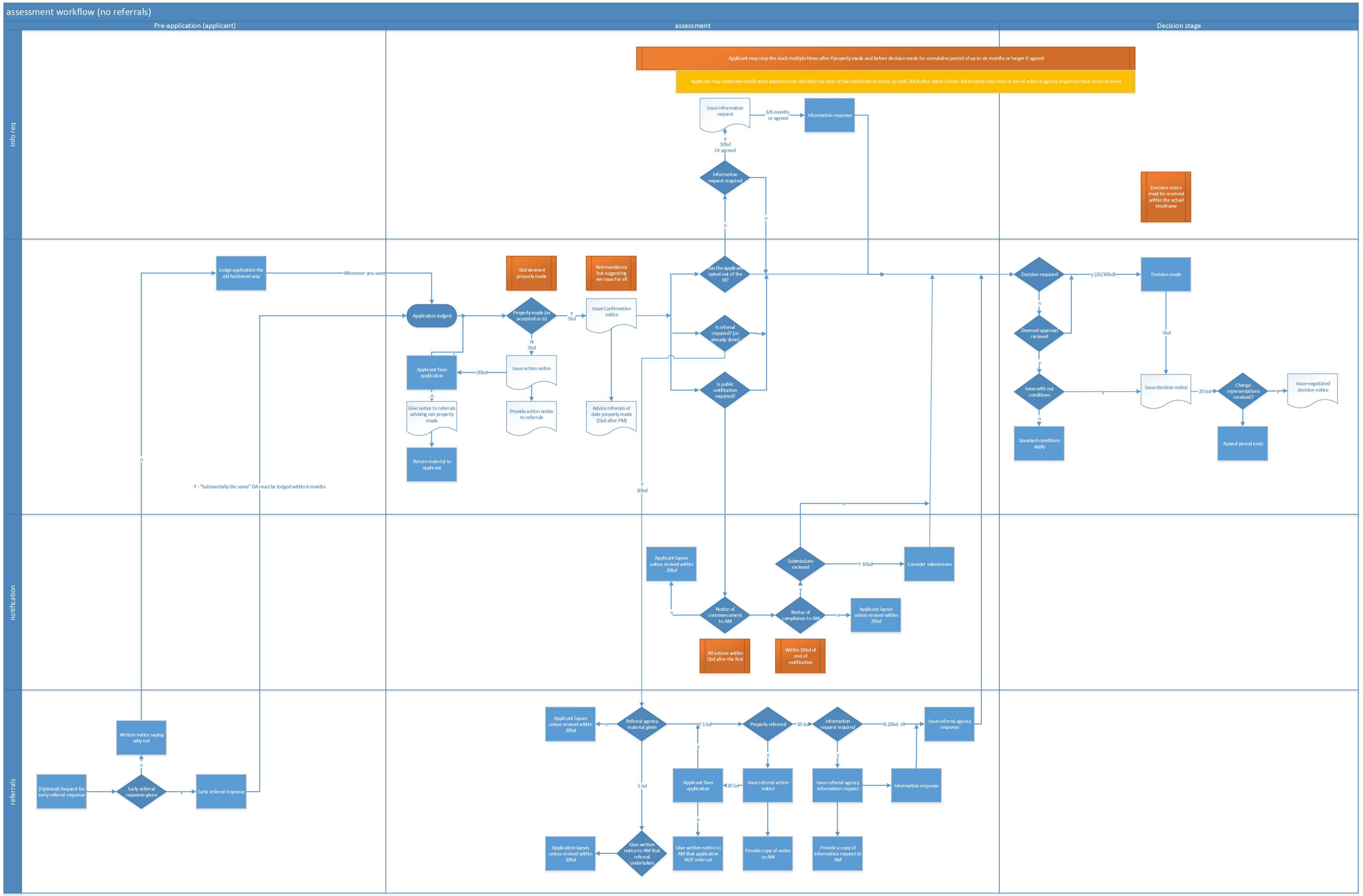
Logan City Council acknowledges the efforts the State Government has made to engage with local governments and welcomes the offer of financial support given during recent meetings. Once a final decision in respect to the legislative reform is made, Council will work with the State and other local governments to successfully implement the new Act and ensure Queensland remains as the national leader in planning and development systems.

We include with this submission (*see attachment 4*) a register of issues and comments which address the Bills in their entirety. I appreciate that you have not sought specific comment on the associated rules, but for completeness, preliminary comments are included. Should you wish to clarify any components contained within this submission, please contact myself

Yours faithfully

Todd Rohl
DEPUTY CHIEF EXECUTIVE OFFICER - STRATEGY & SUSTAINABILITY
(on behalf of Chris Rose, Chief Executive Officer)

Planning Bill: Flow Diagram of Development Assessment Rules (process)



Note: Diagram represents best estimate to date and feedback is welcome

Logan City Council's Submission on the Planning Bill 2015 and Planning and Environment Court Bill 2015

Planning Bill 2015

Section	Matter	Issue
15	Required contents for local planning instruments	With respect to LGIP, the Bill states that 'a regulation may prescribe requirements for the contents of a local planning instrument'. The Bill is less clear than SPA which states that the LGIP must be prepared in accordance with the guideline (regulation).
15	Minister's rules and guidelines	With the reform focus on timeframes, it is requested that Performance Indicator Timeframes contained within the existing statutory guideline be maintained and strengthened. Such that the achievement of the timeframes becomes mandatory and with consequence - similar to referral agencies under the development assessment rules. The proposed changes are regressive in terms of transparency, accountability and certainty for stakeholders.
18	Making or amending planning schemes	How is the ability to negotiate the plan making process beneficial or providing certainty to the community? We note that there is the potential to streamline the process and this is a positive step. This section should be further detailed/re-redrafted to provide clear governance rules for all participants in the process.
20	Making or amending a TLPI	It is requested that councils be given the ability to nominate a TLPI as coming into effect from the day Council resolves to the instrument.
27 (2)	Compensation	How will the term 'adverse planning change' relate to case law? There is a lot of new terminology that is used throughout the Bill which may make it difficult to relate to current case law.
27 (4) (e)	Compensation	Council is supportive of greater clarity of the compensation provisions excluding natural events. Further discussion is necessary regarding the proposed process for assessment of alternatives to ensure practicality in implementation.
27 (7)	Compensation	The definition of gross floor area conflicts with the definition of gross floor area in QPP. It is recommended that the two definitions be the same to ensure consistency in interpretation across planning documents. Acknowledge that QPP is being 'scaled down' but this needs to be reviewed.
Part 5	Designation of premises for development of infrastructure	The designation provisions appear to be significantly expanded by the removal of the 'community purposes' qualifier for the infrastructure. The expansion to include private infrastructure is not supported as it bypasses the assessment process and the opportunity to impose charges on private development. With the reduction in assessment timeframes there is little advantage to using the designation process for private developments as it removes the opportunity for third party appeals.

Planning Bill 2015

Section	Matter	Issue
		It is recommended that the role of local governments be strengthened via a formal partnership with the State Government or local governments being provided a statutory role in a manner similar to referral agencies.
43	Categories of assessment	There is no value in changing the labels for categories of assessment (i.e. code → standard; impact → merit). The path to implementation would be simplified by retaining existing terminology and process, with as much consistency as possible. This is an easy but important 'non-change' that has clear benefit for all parties.
44	Exemption certificate for some assessable development	This concept is supported in principle however there is not enough information contained within the Bill to provide Council with confidence of exactly how this will work. There needs to be guidelines around what is "minor and inconsequential". Some comments/questions on the use of exemption certificates include: a) There is a risk this will be used to address poor scheme drafting rather than amending the scheme to fix the error. b) If there are no clear rules or guidelines, it may also be used differently by all Councils leading to frustration among applicants and industry. c) Can exemption certificates be used at plan sealing stage to excuse small non compliances with conditions of approval that have, over the passage of time, become redundant (this does occur from time to time)? Or is the correct process under the Bill to modify the approval via a variation application? d) Can you appeal an exemption certificate? e) Are exemption certificates limited only to overlays or matters that were considered as part of a previous application such as a reconfiguring a lot? f) Do exemption certificates apply to Merit or only Standard Assessment? g) What implication will an exemption certificate have for planning and development certificates? Will exemptions need to be included in a planning and development certificate? h) Can a person re-apply for an exemption certificate once the two year timeframe has passed? i) Why is the concept of an exemption certificate extended to reconfiguring a lot applications? This is a significant exemption which effectively cuts through the long-held belief that an RL is always assessable. From a practical perspective, it is hard to contemplate a scenario in which this would be needed. Can conditions or infrastructure charges be imposed?

Planning Bill 2015

Section	Matter	Issue
46	Meaning of assessment manager	There is not enough information contained within the Bill to provide Council with confidence of exactly how the (alternate) assessment manager mechanism will work. This is one of the most important initiatives contained within the Bill and supporting documentation is critical. a) How will the risk be managed by both parties? With addressing potential risks, there is little incentive for councils or private consultants to take up this initiative. At present Council is quite comfortable with our RiskSmart initiative which is a valuable tool and utilises an accreditation agreement to manage risks for all parties involved. b) Does Council become a party to the appeal? c) Who funds an appeal for an application that was decided by the alternate Assessment Manager? d) At what point can the alternate Assessment Manager hand responsibility back to Council? e) At what points during the application is Council notified of certain events? f) Is there an accreditation program behind it? g) Is it all Standard assessment? h) Who is responsible for change applications, extension applications and cancelling development approval applications? i) Who is responsible for issuing the letter to the Applicant that the application is about to lapse? j) How will operational works and asset management (on and off maintenance of public assets) work? k) How will an alternate Assessment Manager coordinate applications that involve internal expertise such as environmental and infrastructure issues? l) What happens if an alternate Assessment Manager is not performing to an appropriate standard? m) What happens if an alternate Assessment Manager receives a deemed approval? n) What if an alternate Assessment Manager puts unnecessary conditions on an approval? In particular, what if Council ends up receiving Operational Works applications that they don't want or need due to risk adverse conditions? o) What if the application involves trunk infrastructure - is there any security that Council's assets will be appropriately protected? p) What happens if an alternate Assessment Manager accepts an application that Council would consider to be not properly made? q) There is no process outlined for Council of keeping a 'list of other entities'. r) There is no clarity for how to deal with an alternate Assessment Manager that is no longer in business or ceases to exist. Does this default back to Council? Can this be used as a means for an alternate Assessment Manager to walk away from a decision they issued and not be liable in the Court, leaving Council to defend a poor decision?

Planning Bill 2015

Section	Matter	Issue
		s) There will be implications politically and on Council's delegations.
46(4)	Meaning of assessment manager	There is no timeframe for an alternate Assessment Manager to notify Council of an application they have received. It is recommended that the Chosen Assessment Manager has 5 business days to inform Council and supply the application material to Council or that Council has the ability to request the application material.
56	Effect of no referral agency response	Council supports a 'deemed approval' approach for all referral agencies, regardless of whether or not they are a referral agency with 'advice' powers only.
58	Deciding development applications	Given that compliance assessment has been removed as a category of assessment. It is requested that further clarity be given around code assessment. It is suggested that the following model be considered, which merges both options 1 and 2 presented in the draft Bill. The effective presumption in favour of approval be retained, this provides greatest certainty for a development which is compliant with the acceptable outcomes. This be coupled with the ability to consider higher other matters only as a means of supporting the development application. Ie the assessment manager may only consider grounds, strategic framework or other matters to overcome a conflict not to refuse an application. This would provide the greatest flexibility to all users as well as maintaining the certainty which was sought when compliance assessment was introduced.
62	Deemed approval of applications	Deemed approvals should apply to all development applications, not just standard assessment.
63 (2)(a)(i)	Permitted conditions	Why is there a need to limit how long a lawful use may continue? There is no need for this. If absolutely necessary it could be justified by the "reasonable and relevant test".
64 (2)	Prohibited conditions	This section indicates when conditions are prohibited. A constant challenge faced by Council occurs when an earlier development approval states that development shall occur at a particular standard (imposed under the planning scheme in force at time of assessment) and the subsequent related approvals require assessment under a new planning scheme that requires a new standard. A simple example is: 1. An MCU is granted that requires the development to be above the Q50 2. An OW is applied for, which requires assessment against a new planning scheme that requires the development to be constructed above the Q100. The drafting of section 64 should be improved to clarify which standard should be applied / or what is considered to be 'inconsistent', when assessing a 'related' application – the standard applied to the 'parent' approval, or the standard

Planning Bill 2015		
Section	**Matter**	**Issue**
		applicable to the assessment of the 'related' approval. It is noted that section 64 (2) appears to address this issue, but the section could benefit from improved drafting.
66	Development assessment rules	There is little value in removing the core planning processes to another document. They should be retained within the one document (the Act) to provide transparency and opportunity for consultation.
77	Requirements for change applications	Changing development approvals no longer requires the determination of whether an objection might be made to the proposed change. This change will prevent subjective and hypothetical scenarios being used in the decision making process and is therefore supported. This section has removed the 'unreasonably withheld test' for owners' consent. This was a valuable and pragmatic way in which applications could still be made, particularly the example of the subdivision. Consideration should be given to maintaining this provision.
84	Extension applications	This section could be amended to allow a short 'grace' period after an application has lapsed in which a revival/extension to the currency period could be sought; similar to the 3 months proposed if the application lapses during the actual assessment. This would have some qualifications (e.g. did not attract submissions originally) to provide a certain framework for applicants. This section has removed the 'unreasonably withheld test' for owners consent. This was a valuable and pragmatic way in which applications could still be made, particularly the example of the subdivision. Consideration should be given to putting back this provision.
85 (1)	Deciding extension applications	The Assessment Manager may consider 'any relevant matter'. What is meant by this? This is too broad and vague.
87	Particular approvals to be noted	What is the intent of noting these types of approvals in the scheme as it does not amend the planning scheme? It is not necessary. All applications can be viewed on PD Online. It also creates an unreasonable administrative burden on Council. Furthermore what is considered to be 'substantially inconsistent'?
100 (3) (ii)	Call in notice	The Minister can decide the 'restarting point' and may have regard to 'anything the Minster considers relevant'. What is meant by this? This is too broad and vague.
102 (2)	Reasonable help	What is the intent of this? All of Council's development applications and associated documents are available to be viewed on Council's website via PD Online. Council operates a 'paperless office' and does not keep hard copies of material.

Planning Bill 2015

Section	Matter	Issue
102 (4)	Provisions for Minister to decide application	The Minister may consider anything the Minster considers relevant. What is meant by this? This is too broad and vague. How do you determine what the application should be assessed against?
110	Regulation prescribing charges	It would be advantageous if this section was amended to introduce an automatic annual indexation to the maximum adopted charges to reasonably reflect increasing infrastructure costs and remove the politicisation of this perennial issue.
117 (3) (b)	When charges may be levied and recovered	The timeframe should be changed from 10 days to 20 days to achieve consistency with (c), (d) and 117 (8) (b).
117 (12) (b)	Charges payable by the applicant	Suggest that this section be amended to stated ultimate responsibility for payment lies with the landowner rather than the applicant in a similar manner to rates.
118 (3) (a)	Limitation of levied charge	A previous use that is no longer taking place may not have previously contributed to all of the networks that exist today. This section should be amended so that a previous use that no longer exists, will only be credited for those networks to which they have previously contributed to.
119 (3)	Decision notices	Changing the term from an 'information' to 'decision' notice will lead to confusion as this term relates specifically to the development approval itself. Should remain as information for this reason.
123 (3) and (6)	Representations about infrastructure charges	The time frame for advising of a decision is 5 days in s3 and 10 days in s6. One of these should be amended for consistency. Ideally to bring it into line with existing timeframes for such notifications.
125	Conditions relating to trunk infrastructure	The legislation should be amended to provide Council's with the means to impose trunk infrastructure conditions where they are reasonable, rather than the current provisions, which only allow conditions to be imposed where the infrastructure is required by the development itself.
126 and 127	'Necessary infrastructure' offsets	There are situations where necessary conditions are primarily required for the development itself and therefore such offsets should only apply to that amount that can be apportioned to other users and not the full cost. It is not equitable that Council's are left to carry the full costs of infrastructure that supports developments.
132	Refund if development in PIA	2(a) No refund should apply if the development exceeds the type or scale of the development assumed in the LGIP. This is inequitable to Council's for developments that are not in accordance with the planning scheme. 2(b) Clarification is sought. How can this be the subject of a charge when the charge is not directly linked to the cost of infrastructure and cannot change the maximum allowable charge to include this cost?

Planning Bill 2015

Section	Matter	Issue
136	Conversion applications	Concerns are held with the underlying concept. LGIP's are approved by the State and identify what is trunk for the life of the LGIP. Developments outside of the LGIP should provide the additional infrastructure that is required for it to proceed should fully undertaken by the development at its cost and not funded by the community. Under the Bill conversion applications are only available for 1 year after the development approval is given. This change is an improvement as it limits local governments exposure and provides more certainty around infrastructure budgeting. Consideration should be given to further reducing the timeframe for such a request by utilising the existing 20 appeal period and negotiated decision mechanism. This would simply the process further by taking advantage of existing mechanisms and processes.
137	Conversion applications	Under the Bill conversion applications are only available for 1 year after the development approval is given. This change is an improvement as it limits local governments exposure and provides more certainty around infrastructure budgeting. Consideration should be given to further reducing the timeframe for such a request by utilising the existing 20 appeal period and negotiated decision mechanism. This would simply the process further by taking advantage of existing mechanisms and processes.
138 (1)	Notice of decision	There is no timeframe for the local government to advise of a decision on a conversion application. It is recommended that 5 business days be nominated for the sake of having a timeframe and being consistent.
139 (1)	Notice of decision	As for comment to 119, changing from 'notice' to 'decision notice' will be confusing and should not occur.
184 (2) (ii)	Appeals to tribunals or P&E Court	This section increases the appeal period from 10 to 20 days to encourage more matters to be sent to such tribunals, and as such is supported as it reduces time and costs.
185 (2)	Appeal rights	As a general matter of justice, decisions made by a Minister under the Act should be appealable.
194 (3)	Application for declaration about making of development application	To start a committee proceeding, the Applicant and Assessment Manager have different timeframes. It is recommended that these timeframes be aligned for consistency and fairness.
202 – 204, 214 & 216	Inspector	Consideration should be given to extending those powers nominated below (new provisions for officers of the State Assessment & Referral Agency) under Division 2 and Division 4 of the Planning Act to an authorised officer under the Local Government Act. Division 2 Seizure by inspectors and forfeiture • 202 Seizing evidence at a place that may be entered without consent or warrant • 203 Seizing evidence at a place entered with consent

Planning Bill 2015		
Section	**Matter**	**Issue**
		• 204 Seizing evidence at a place entered with warrant Division 4 Other information-obtaining powers of inspectors • 214 Requiring documents to be produced • 216 Requiring information
231	Appeals to tribunal	S231(1)(a) limits the matters which may be heard by the tribunal. It is considered that other material changes of use, outside of those limited to a classified building, may be able to be considered by the tribunal, noting the limitations 231(2). This would result in a cost saving to the parties involved. S231(1)(a) limits the types of operational works that may be able to be considered. It is suggested some other minor types of operational works may be considered, such as minor earthworks (filling and excavation). This would result in a cost saving to the parties involved. S234 is noted, which allows development conditions to be appealed to the Tribunal for some minor class 2 buildings. This section is supported. Any changes to broaden the scope of the tribunal to hear matters may also result in a consequential change to other sections, such as s262, which deals with change applications.
241	Infrastructure charges notices	Regarding s241(2), clarity is suggested regarding the determination of the value of an offset or refund, where that refund is determined in accordance the local government's charging resolution. The use of the word 'cost' at (2)(b)(ii) might be ambiguous. This comment also applies to s252(2)(b)(ii).
243	Statutory instruments	• Council has recently adopted a *Sustainable Planning Act* (*SPA*) compliant planning scheme. • Due to the timing of the new Bill, there is significant risk that our customers will be impacted by significant policy changes in a relatively short amount of time. It is assumed that Council will need to amend the scheme so that it complies with the new *Planning Act,* and adopt a new *Planning Act* compliant scheme shortly after the new Act commences. It is requested that the State consider such an amendment as this to be a minor amendment (as it has been through public notification) and allow the draft *Planning Act* compliant scheme to be adopted shortly after the *Act* commences. This would save Council considerable time and resources.
286	Planning and development certificates	There is a significant change from SPA for limited planning and development certificates. Currently, under section 738(a) SPA, for a limited PDC, local government only need to give a summary of any 'charges resolution applying specifically to the premises'. This does not include information on infrastructure charge amounts that may have been paid (or remain outstanding) for the premises.

Planning Bill 2015

Section	Matter	Issue
		The mirroring provision in the proposed regulation requires 'a copy of any information recorded in the infrastructure charges register for the premises' for a limited PDC. The 5 day turnaround time remains the same. This means that Council would need to provide infrastructure charge information for each property (which is currently only done as part of a standard or full PDC). This information will be difficult to provide within this timeframe and consideration should be given to extending the statutory timeframe for a limited PDC, to enable local government to provide full and accurate infrastructure charge information.
309	Transitional provisions	It is difficult to determine if the Bill requires local governments to bring their planning schemes into alignment with the new legislation within a specified timeframe or whether there will simply be provisions which will 'translate' the scheme into the new format.
321	Levied charges	321 (3) is very confusing and does not remove any doubt. Wording under the saving provision of the amended SPA is easier to understand and less likely to be misinterpreted.
323	Infrastructure charges resolution	This section seems to say that local government will not be allowed to condition trunk infrastructure or issue an ICN if Council does not have a LGIP in place by 1 July 2018. The Bill is less clear than SPA and would benefit from a re-draft.
Schedule 1	Dictionary	Material Change of Use – the definition appears to exclude a 'minor change of use' which is not defined and is referenced in the proposed regulation. The provision appears to contemplate land use changes which are not captured as MCUs and as a consequence may reduce Council's capacity to regulate and impose conditions. The Regulations themselves provide no reference to 'minor change of use' and consequently the effect of this definition is unclear.
Schedule 1	Dictionary	Minor Change – The definition has been altered from the previous 'permissible change' under SPA and has removed the 'cause a person to make a properly made submission'. This change will remove uncertainly and is supported.
Schedule 1	Dictionary	a) Operational Works - This definition has been considerably reduced in comparison to the current *SPA* definition and it is considered that it will now make certain things not assessable. For example, Advertising Devices that need building approval will not need Operational Works approval from Council. b) Council would prefer not to have advertising signs as a development application, and rather have them regulated via a local law.

Planning Bill 2015		
Section	**Matter**	**Issue**
		c) For work to be considered operational works, the work has to materially affect the property. Will this have an impact on vegetation clearing where only a small amount of vegetation is cleared on a large property? Does the fact that Council considers any vegetation on a property to be important enough for it to be operational works? d) For clarity, the existing definition of Operational Works in the *Sustainable Planning Act* would be preferred to the proposed definition. e) Further clarification is sought on what regulatory guidance will be available to local government on how to determine in what instances operational works materially affect a premises or its use.
Schedule 1	Dictionary	Properly Made - item (e) requires "1 electronic address" (an email address?) in order to be a properly made submission. What if the Applicant does not have an email address? This is a restrictive provision that adds no value.
Schedule 1	Dictionary	Variation Request - can this be called something else because it can be confused with a change application (modification)? Possibly call it an Overriding Request or leave as is under SPA?
Schedule 1	Dictionary	Definition of Use – Under SPA this included any uses incidental and necessarily associated with the use of the premises. This is a much tighter and more certain definition than the new definition which simply includes any ancillary use. This requires amendment or clarification as the definition will be challenged by persons attempting to place additional uses on a property without the necessary approval.
Miscellaneous	Priority Development Area	How does the Bill relate to Priority Development Areas?
Miscellaneous	Portable Long Service Levy	At present the *Building and Construction Industry (Portable Long Service Leave) Act 1991* requires the levy to be paid prior to the issuing of a development permit for building work, plumbing and drainage work, or operational work, or, if no development permit is given, before the work starts. This can often delay the issuing of operational works approval. It would be preferred if this was amended so that there was no link between the portable long service leave and the issuing of development permits. PLSL payment should only be required prior to construction commencing.
Miscellaneous	Dwelling houses	This issue straddles both the Planning and *Building Act*. It requested that the State resolve the 'conflict' between the *Building Act* and the Planning Act in terms of houses; that is, let the *Building Act* deal with houses and the planning legislation to state that the *Building Act* deals with houses. Having observed the recently adopted planning schemes around the state it is clear that this area requires attention. The overlapping mechanisations of the *SPA Regulations*, *SPA*, QPP and the *Building Act* are intensely complicated and has resulted in some planning schemes being unusable and lengthy with regards to houses and building works. The end result remains that regulation pertaining to houses and building works is unclear and inconsistently used around the state. The schedule 7 (Regulations) exemption do not assist and have contributed to the problem.

Planning Bill 2015

Section	Matter	Issue

Planning and Environment Court Bill 2015

Section	Matter	Issue
17	ADR registrar's powers - general	This division is broadly supported, as it allows further scope and guidance for matters to be resolved and determined through the ADR process, potentially leading to expeditious decisions and cost savings for involved parties.
26	Discretion to deal with noncompliance	This section has been expanded to no longer be limited to a development application that has lapsed or a not properly made development application. It appears section 26 can now deal with a range of non-compliance matters which is an improvement and supported by Council.
45	Who must prove case	S45(2) is supported, noting the onus remains on the applicant to prove the appeal should be dismissed.
46	Nature of appeal	S46 differs from s495(2)(a) SPA 2009, which includes provisions for the court to give "weight to any new laws and policies the court considers appropriate". This provision allows the court to apply forward planning principles to matters, but was a 'double-edged sword', due to the creation of uncertainty between the parties as to how and what weight a court might decide to give to any new laws and policies, due to both the unknown subjectivity of the court, and the fact that this discretion can only be applied by way of judgement, and not beforehand. It is noted s46(3) seeks to address the prior uncertainly of s495(2)(a), but limiting the scope of the court to only consider the matters which an assessment manager may consider. Whilst the uncertainty aspect is dealt with, the tradition of the court being able to consider forward-planning principles appear to be significantly constrained. This may have impacts on long-running appeals. It is suggested this section be amended to allow for some limited consideration of forward planning documents, which may fall out of the scope afforded by s43 of the Planning Act. In particular, consideration of any "new laws and policies" could be made relevant to a proceeding by order of the court, early in the proceedings, thus giving the parties and the court certainty, whilst allowing for certain and important forward-planning principles to be considered by the court.

Planning and Environment Court Bill 2015

Section	Matter	Issue
Part 6	Costs	The cost provisions are broadly supported; in particular, that Council can seek costs incurred by investigating or gathering evidence for a development offence, declaration or defending an enforcement notice appeal. Whilst this is unlikely to be a provision much relied upon, it certainly strengthens local government's position when entering proceedings, and would likely deter would-be appellants from lodging an appeal against an enforcement notice if they do not have a reasonable prospect of success.
Miscellaneous		Council is supportive of the increased jurisdiction of the Building and Development Tribunal as an alternative dispute resolution mechanism that is an efficient and cost effective method for settling appeals. It also allows the Planning and Environment Court to focus on appeals involving larger more complex development applications that usually end up at hearing. Any initiative designed to reduce dispute resolution costs for all parties will always be positively received and accepted by Council.

Development Assessment Rules

Section	Matter	Issue
1	Early referral response	The expansion of this ability is supported as it gives the applicants the opportunity to resolve significant issues prior to lodging the application.
4	Properly made	The concept of allowing the assessment manager to accept an application as 'properly made' without the fee or the correct form is supported in principle as it allows Council to excuse minor matters such as the use of old forms. Guidance is sought as to whether these excusatory powers are open to challenge by a third party as this represents a potential risk to Council.
Note 4.1.2	Properly referred	The identification and carry out of referrals appears to be completely the applicant's responsibility and can occur prior to the application being properly made. This creates some unnecessary work (and wastes effort) for councils and applicants for the sake of 5 business days. Notwithstanding the early referral provisions, once the application is made, referral should not occur until the application is properly made. This will avoid the risk of starting a referral process for a not properly made application, and all of the paperwork and returning of documents and fees that are generated in trying to resolve the matter and communicate the re-start date. The requirement for councils to notify the referrals in addition to the applicant when an application is properly made is an administrative burden.

Development Assessment Rules

Section	Matter	Issue
7	Confirmation notice	There is no benefit in changing the name from 'Acknowledgement notice'. From a change management and cost perspective, when there is so much changing in the Bill, keeping what can be kept the same is important. Please consider retaining the existing name. The concept of the notice no longer identifying referrals removes a 'check and balance' of one of the most complicated parts of the DA process. Whilst Councils will welcome the responsibility being removed, this change coupled with the ability of the applicant to refer before the application is properly made will pose significant risks to the applicant and should be reconsidered.
9	Opt-out of the further information step	Council strongly objects to the provision and its replacement with '…do not prevent the assessment manager…informally seeking more information". This change is fraught with danger and without benefit. It makes the process less transparent and drives the assessment 'underground' into the realms of phone calls and emails. The general public cannot be assumed to know what information Council would like to see in support of the application. It reduces the opportunity for collaboration and creates a more adversarial framework. The existing process allows an applicant time to make an informed decision about whether they wish to respond to an assessment manager's request. If the motivating factor for this change is timeframes, then possible alternatives may be that the assessment manager is given only 5 days to issue an information request, or 10 days from date the application was received, or that the time taken to issue an information request be taken off the decision stage, in a manner similar to the referral assessment period. These provisions are also complicated by applications re-starting and the opt-out provisions being removed from the 'second run' of the application.
Note 14.1.1	Non lapsing for not responding to an information response	When an applicant does not respond to an information request, rather than the existing SPA provision of lapsing the application, the draft Bill says that this circumstance results in the decision stage commencing. This is a sensible and practical way to deal with this scenario and will save applicants from having to re-lodge applications.
16	Giving referral agency material	Similar to the 'Note 4.1.2 comments', the referral process could be simplified if it did not occur at the same time the application was lodged, but after it was properly made.
17	Assessment manager undertaking referrals on applicant's behalf	It is unclear why this provision has been included. If an applicant is capable of lodging an application, they are capable of undertaking the referrals. It places an undesirable responsibility on the assessment manager to act on behalf of the applicant.

Development Assessment Rules

Section	Matter	Issue
25	Floating public notification	The option for notification to be undertaken at any time complicates rather than simplifies the process and will have a significant impact on the systems and processes used by councils. In addition to the cost, this change also creates uncertainty for stakeholders, in particular the public. Development assessment is about managing expectations, delivering consistency and fostering confidence. Notification requirements should be clear and prescriptive to give certainty to Council, the applicant and the community as to when and how notification should be undertaken. Flexibility in the execution of the notification process introduces an administrative burden and inconsistency. This is a regressive step in terms of removing the confidence of the public to predict when an application might be available for comment, and presents little or no value to the applicant. An early notification carries a risk that a proposal may be altered through consequent negotiations. Depending on changes, the proposal may have to be re-notified, resulting in an extension of assessment timeframes, further uncertainty and inconvenience to the community.
26	Public notification	The ability for the assessment manager to excuse or allow an application to be notified in 'another form' is a good initiative.
30	Considering submissions	The provisions of a 10 day timeframe for assessment managers to consider submissions is a welcome addition as the ability to extend the decision making period without the applicant's agreement has been removed. Apart from allowing extra time to consider submissions it will allow councils to better manage the Council meeting cycles should delegations require such applications to be decided by full Council.
33 and 34	Decision period	The reduction in timeframes is supported. Similar to other sections of the 'Act', it is requested that a separate 5 business day timeframe be included after the decision is made in which the assessment manager must issue the decision notice. The timeframes are much reduced and the addition of a period to issue the notice allows the assessment manager full use of the 20 or 30 days to make the decision. The applicant can be informed of the decision during the decision period, and the administration (in terms of issuing the notice) can occur in the following period. This creates consistency across the Act as well as allowing more time for collaborative processes such as the issuing of draft conditions. Consideration should be given to mandating this into the process. This process works better outside of the legislation, otherwise it is a just a request for a negotiated decision. The timeframes need to be long enough to allow time for these collaborative exercises, which reduce representations and appeals to the decision.

Development Assessment Rules

Section	Matter	Issue
36	Native Title Act	Under SPA, the responsibilities under the Native Title Act are carried out after the decision on the application is made. It is unclear exactly what the implications are for all parties by requiring the Native Title responsibilities to be executed prior to the decision being made on the application.
46	Extending periods of time	46.1 (3) states that no period of time can be extended where a DA is required by an enforcement notice. This should be at the assessment manager's discretion, as often in these circumstances Council is negotiating to have someone cease doing something or to move from a site. The ability to give people time in this instance is an important element of negotiations. This section should be amended accordingly, otherwise it will create pressure and adversarial behaviour.
48	When an application lapses	The extension of the revival timeframe for lapsed applications from 5 days to 20 days is a welcome addition and will allow more applicants to revive their applications.
48	Lapsed applications	48 (4) Requiring an applicant to return the development application for lapsed applications is an administrative burden. Council operates a paperless office and hard copy documents are scanned and then destroyed. All of the information is available in digital form (e.g. via PD Online) and this should be adequate.
49	Stop the clock provisions	The monitoring of these mechanism is a further complication for assessment managers. Perhaps as a means of striking a better balance between the parties the opt-out information request provisions for the applicant could be removed. May reduce the need to stop the clock. Alternatively, applicants currently have the ability to either extend the decision making period or to suspend the decision making period to make representations. The existing provisions are adequate.
51	Third party advice	51.1 (2) is very open in terms of how Third Party advice may be solicited. Clarification is sought as to whether this section intends to suggest that code applications may be publicly notified for the purposes of receiving third party advice. Such a possibility would be open to abuse and confusion and this section should be redrafted to remove the opportunity to publicly notify a code assessable application.
53	Deciding change representations	The change in terminology from request for a negotiated decision is not supported. There is no value, only uncertainty in changing terms unnecessarily. The introduction of a 20 day timeframe for these requests is a welcome initiative. It is suggested that the stop the clock provisions not extend to this phase of the assessment as it stands alone, and applicants have had the benefit of their appeal period in which to consider their position. Furthermore the 20 days can be extended by agreement between the parties.

Development Assessment Rules

Section	Matter	Issue
Schedule 1	Substantially different	The concept of 'substantially different' has several applications under the draft Bill. It exists for the early referral provisions, the change provisions and the public notification provisions. The DA rules provide a good starting point for defining the concept. A detailed guide or implementation notes would be very beneficial in reducing uncertainty and differences of opinion/interpretation.
Timeframes generally	Cultural change	Legislative change or reduced timeframes will not result in positive cultural change within local governments. Most of the changes are in favour of the applicant and place further pressure on local governments. These changes if anything will result in less collaboration and an increase in adversarial behaviour. If cultural change is a driver for the legislative reform, it is suggested that this be reconsidered and approached in a different way.

Minister's rules and guidelines for making or amending local planning instruments

Section	Matter	Issue
1.1 (should be 1.5)	Exemptions	Provides that matters which were previously 'administrative amendments' are exempt from the rules. Whilst the reduction of regulation is supported, this raises questions about how these matters are addressed: • Are they 'changes' to the planning scheme? • Will issues arise because the certified and published copy of the scheme held by the State is different to the changed version? An alternative would be that these matters remain an 'administrative amendment' and only require Council adoption and publication (step 3.24).
4 (Table 3, rule 3.5)	Consultation concurrently with state interest review	Question the value, as this may significantly complicate the process, particularly if substantive matters are raised by the State. There may be questions regarding whether matters raised by the State make the amendment 'significantly different' and require re-advertising.
4 (Table 3, rule 3.11)	Consultation required for minor amendments	Consultation for a minor amendment is unnecessary and significantly diminishes the value and efficiency of proposing a minor amendment. If there are problems with the current process, perhaps the definition of 'minor amendment' can be reviewed.

Minister's rules and guidelines for making or amending local planning instruments

Section	Matter	Issue
4 (Table 3, rule 3.11)	Consultation period for major amendments	Requires major amendments to be publicly advertised for 40 business days (an extension of 10 days to the current 30). Not a huge change, given the overall timeframes for major amendments, however the necessity of and difference in positive outcomes to be achieved by this change is questionable.

Planning Regulation 2016

Section	Matter	Issue
3	Advisory note	The advisory note states that the regulatory provisions of particular State planning regulatory provisions, including the SEQ Koala SPRP and the SEQ Regional Plan SPRP, are yet to be transitioned into the Regulation. It is essential that these provisions be included, however without an opportunity to review the transitioned provisions it is not possible to provide further comment.
9	Minister's rules	With the reform focus on timeframes, it is requested that Performance Indicator Timeframes contained within the existing statutory guideline be maintained and strengthened. Such that the achievement of the timeframes becomes mandatory and with consequence - similar to referral agencies under the development assessment rules. The proposed changes are regressive in terms of transparency, accountability and certainty for stakeholders.
13	Rules for planning changes made reduce risks natural events.	There is inadequate information contained within the regulation as it refers to 'xxxx' documents available on the department's website. It is difficult to establish an informed view without all of the information. These are potentially significant provisions relating to decision making and as such needs appropriate discussion and consideration concurrently – not after the head of power in the Bill and Regulation are introduced into Parliament.
Schedule 7, 1 (2)	Material change of use for particular building or structures.	These provisions were introduced under SPA and have proven ineffective in simplifying the assessment of houses and other domestic structures. These provisions should either be redrafted or removed completely as they have resulted in further complication and confusion around the assessment of such structures.

Schedule 31 1 (d) Planning Regulation 2016)	Planning and development certificates	There is a significant change from SPA for limited planning and development certificates. Currently, under section 738(a) SPA, for a limited PDC, local government only need to give a summary of any 'charges resolution applying specifically to the premises'. This does not include information on infrastructure charge amounts that may have been paid (or remain outstanding) for the premises. The mirroring provision in the proposed regulation requires 'a copy of any information recorded in the infrastructure charges register for the premises' for a limited PDC. The 5 day turnaround time remains the same. This means that Council would need to provide infrastructure charge information for each property (which is currently only done as part of a standard or full PDC). In practicality, this involves searching archived and electronic records, some of which may need to be retrieved from off-site locations. This information may be difficult to reasonably provide within this timeframe. Consideration could be given to extending the statutory timeframe for a limited PDC, to enable local government to provide full and accurate infrastructure charge information.