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Planning Institute Australia

PLANNING CONGRESS
11th - 13th May 2016, Brisbane

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

Email: ipnrc@parliament.qld.gov.au

Dear Sir/Madam

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.

In 2014, the Planning Institute of Australia (PIA) commented on the Planning and Development (Planning for Prosperity) Bill, Planning and Development (Planning Court) Bill. No further comments have been made on these Bills as part of this submission.

As you are aware, the PIA in 2015, advocated for the then, Planning and Development Bill and subsequently the Planning Bill. The aims of both Bills to have the best planning system in Australia is supported, consistent with our national policy titled, *Planning, Systems Principles*.

PIA adopted strategy, *Planning Matters; Shaping the World Today for Tomorrow* highlights the importance, amongst other things of having the right legislation to assist the planning industry achieve good planning and development outcomes. PIA supports legislative change where it makes the planning and development system logical, sensible, better.

It must also be recognised that there is a substantive cost to change which will have a direct impact on our members and the broader community, so any change, should not be made for the sake of change. Change should add value and be evidence based and it remains unclear how the objectives of the Bills could not be achieved within the current legislative framework, using existing terminology and language.

We, like you, recognise the impact that culture has on the day-to-day operations of our industry and will continue to advocate in this area, which for the most part, is addressed through non-legislative reform.

PIA is committed to any planning reform agenda that assists our members and all other participants in the planning system. On this basis and in recognition of the expected delivery of the new planning legislation in 2016, please find attached a series of specific comments to assist in further refinement of the Planning Bill 2015 and Planning and Environment Court Bill 2015.

Should you wish to clarify any components contained within this submission, please contact PIA Qld's State Manager, Dan Molloy, (via email dan.molloy@planning.org.au or phone 0407 653 809), who can arrange a time with relevant PIA members to discuss our submission.

Yours sincerely,

Todd Rohl MPIA
Qld President

Amanda Taylor MPIA
PIA Qld Policy Committee

PLANNING BILL 2015

Clause no.	Clause title	PIA submission
9	When planning instruments and designations have effect	The power for a local government to give effect to a TLPI from the date of a Council resolution at a public meeting is not supported. If the public is not given advance notice of the introduction of a TLPI there may be some unintended consequences. For example, a development applicant may lodge an application which does not take into account the effect of the TLPI, which may lead to wasted resources for the applicant and Council. Further, a person, without knowing, may undertake development which has been deemed unlawful under the TLPI and become liable for prosecution.
25(2)	Reviewing planning schemes	The public notice about a local government's decision not to amend or replace its planning scheme should also be required to be published on the local government's website.
26	Power of Minister to direct action be taken	PIA questions the extent of the Minister's broad powers under the Bill. Any direction made by the Minister should be able to be the subject of judicial review or an appeal.
29	Request to apply superseded planning scheme	This provision does not appear to require State agencies (e.g. SARA) or any other third parties having an involvement in the development application process to also assess a development application against a superseded planning scheme. This could result in inconsistencies between the requirements which a local government assessment manager must apply when assessing an application, and those which must be applied by others. Additionally, it should be made clear that any approval of a request to apply a superseded planning scheme runs with the land.
30	When this division applies	The new compensation provisions introduce new terminology and rules. It is suggested that further guidance be provided, perhaps in the explanatory notes, as to how these provisions are intended to operate. For example, clause 30(3)(a) requires clarification.
36	Criteria for making or amending designations	The requirements to comply with the environmental assessment and consultation criteria for making or amending designations should apply equally to any designator (i.e. including a local government), rather than the Minister only.
41	Repealing designation – owner's request	An owner of an interest in designated premises should have the opportunity to appeal to the Planning and Environment Court against any decision to refuse the repeal of a designation on the basis of hardship rather than be forced to seek a review by the Supreme Court

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		in judicial review proceedings. The specialist Planning and Environment Court can quickly and effectively act as an independent third party to consider whether the designation is appropriate. In relation to clause 41(5), the designator should be required to notify the owner of the outcome of the review if the designator decides to repeal the designation.
44	Categories of development	Many local governments have progressively evolved their development risk profiles in new planning schemes to provide greater levels of self-assessable development and supporting code measures. There is little to no understanding as to how this approach may transition under the proposed new categories of development, particularly with regard to accepted development. Further, PIA is concerned that the term accepted development will lead to a perception by members of the public that the term 'accepted' may give the impression that there are no rules regulating that particular type of development. For these reasons, it is suggested that the categories of development revert to the following categories: prohibited development, assessable development, self-assessable development and exempt development. However, the removal of development requiring compliance assessment from the Bill is supported.
45	Categories of assessment	The use of code and impact assessment terminology is supported. Although the introduction of the concept of assessment benchmarks is questioned. Further clarification of the functional arrangements regarding assessment benchmarks is required.
48	Who is the assessment manager	The Bill and explanatory notes do not include enough information to fully explain how the alternative assessment manager initiative will work. It is requested that further supporting documents be released. In particular, it is considered that: • auditing of the performance of the alternative assessment managers should be provided for; • necessary qualifications for alternative assessment managers should be specified (including different qualifications for different types of assessment if need be); • it should be clarified how operational work will be assessed or regulated; • it should be clarified whether an alternative assessment manager is entitled to engage external consultants to assist in assessing aspects outside of their area of expertise (if any); and

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		• there will be many unknowns with respect to an appeal against a decision of an alternative assessment manager which will need to be appropriately managed.
49	What is a development approval, preliminary approval or development permit	The definitions of variation request and variation approval should be moved from the schedules to clause 49 so all aspects of the definition of a development approval, preliminary approval and development permit are included in the same location.
50(1)	Right to make development applications	The words 'including for a preliminary approval' are unnecessary. For the sake of clarity and simplicity they should be removed.
53	Publicly notifying certain development applications	The public notification period should be the same for all types of development applications (e.g. 15 business days). This will ensure consistency and may avoid unnecessary confusion during the IDAS process. The purpose of clause 53(6) is unclear and should be clarified.
56	Referral agency's response	The removal of advice agencies is supported. Any entity has the power to provide non-binding advice to an assessment manager or a development applicant irrespective of whether that process is regulated. Accordingly, it is suggested that clause 56(5) be removed so that the concept of an advice agency is not included in the Bill.
59(1)	What this division is about	The words 'including variation requests' are unnecessary. For the sake of clarity and simplicity they should be removed.
60(2)(b)	Deciding development applications	This clause deals with the circumstances when an assessment manager may approve a code assessable application even if the development does not comply with some or all of the assessment benchmarks. Two examples are included in the clause. A third and important example included in the explanatory notes is that the approval may be issued in circumstances where appropriate conditions can be imposed on a development to address any non-compliance. It is suggested that this example be included in the Bill in addition to the existing two examples.
63(2)	Notice of decision	To ensure a transparent and open development application system, the assessment manager should be required to include appeal rights in the notice of decision.

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63(4)	Notice of decision	High growth local governments should also be required to publish a notice of decision for operational work.
77	What this subdivision is about	The clause refers to the subdivision being about changing a development approval 'after all appeal periods in relation to the approval ends'. The clause should refer to changing a development approval 'after a development approval takes effect'.
86	Extension applications	This section could be amended to allow a short 'grace' period after an approval has lapsed in which a revival or extension to the currency period could be sought, in appropriate circumstances.
87	Assessing and deciding extension applications	In deciding an extension application, an assessment manager should be required to give reasons why an application has been refused or a shorter time period has been given to that requested.
104	Deciding called in application	If the Minister gives a call in notice to the decision-maker, the Minister must assess and decide all of the application. The ability for the Minister to only assess and decide part of the application has the potential to be problematic and cause confusion.
Infrastructure charging provisions (Chapter 4)	Refund if development in PIA	The change or alteration to a local government infrastructure charge resolution which increases the adopted charge from the amount provided in a previous resolution can create great difficulty in working out 'additional demand' for trunk infrastructure on change requests or extension requests where part of the development is not changed or extended. It can also be opportunistic and result in substantial increases to the cost of development. The rules should be clarified so that only additional demand is charged for. For example, where the configuration of units in a development changes (e.g. from 10 x 1 bedroom units and 3 x 3 bedroom units) is changed (e.g. to 6 x 1 bedroom units, 5 x 2 bedroom units and 1 x 1 bedroom unit) there is little change to the development population or characteristics to place any new demand on infrastructure, but the charges payable could be very different.
158	Particular local government land held on trust	A local government who holds land in fee simple on trust should be required to give public notice prior to selling the land.
166	Show cause notices	The Bill regulates how an enforcement notice can be served on a person. The Bill should specify that the same methods are to be used for the service of show cause notices.

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173	Proceedings for offences	The time limitations on the commencement of offence proceedings should be revisited. Relevantly, in some circumstances it will not be possible to determine when an offence has been committed
175 and 179	Enforcement orders	The requirement for a defendant to ask the registrar of titles to record the making of an enforcement order on the register of the premises may lead to unintended consequences. In particular, a defendant is unlikely to apply for an enforcement order to be removed from the title of a property once the requirements have been satisfied. This may affect a landlord who potentially had no involvement in the offence.
267	Making or renewing registrations	The purpose of these types of registrations is unclear. The consequences of registration ought to be clearly stated.
286	Statutory instruments	Consideration should be given to this section and how planning schemes adopted within 12-24 months of the proposed Planning Bill may be readily transitioned to meet its requirements. A potential solution would be to include prescription that updates to the existing new scheme be carried out as a minor amendment.
288	References to the old Act or provisions of the old Act	This clauses state that "self-assessable development, to the extent the development does not comply with all applicable codes for self-assessable development" becomes assessable development. The clause does not state whether the self-assessable development becomes code assessable development or impact assessable development. This should be clarified.
Definition	Development	'Plumbing and drainage work' is not regulated by the Bill or state or local planning instruments. Accordingly, this type of work should be removed from the definition of development.
Definition	Use	The definition of use under the *Sustainable Planning Act 2009* (Qld) is established and the meaning of it is widely known. It is considered it is unnecessary to change the definition, especially when the term 'ancillary use' is not defined in the Bill..

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Part 4, Division 1, Subdivisio n 1	ADR process	The existing *Planning and Environment Court Rules 2010* (Qld) contains some guidance on who may attend without prejudice conferences. However, the Bill is silent on who must participate in the ADR processes. Due to the attention this issue has been given in recent years, it is considered important that further guidance is given on this issue.
17	ADR registrar's powers - general	The Bill provides that referral to an ADR process does not stay a P&E Court proceeding, but P&E Court cannot decide the proceeding until the ADR process has been finalised. PIA suggests a mechanism to ensure that the ADR process cannot unnecessarily drag out and can be finalised by the Registrar (perhaps an ADR Certificate could be given) where there are any uncooperative parties, or it is clear that the ADR process has run its course in the mind of at least one party.
18(2)	Resolution agreement	This clause says that an agreement arising out of an ADR process has effect as a compromise. It is unclear what the purpose of this clause and should be reconsidered or further explained.
27	ADR registrar's powers – general	It should be clarified whether an ADR registrar has or does not have the power to make a declaration in a Planning and Environment Court proceeding.
37	Discretion to deal with noncompliance	The extension of the Planning and Environment Court's discretionary power to all relevant statutes is supported.
39	Planning Minister	It is considered that the Minister should only be permitted to join an appeal within the usual 10 business day election period. This will ensure that the parties to a proceeding are not unduly inconvenienced by an additional party joining at a late stage and that the parties are not required to expend additional resources to account for the Minister's late entry. Alternately, the Minister should have to pay parties' costs that are 'thrown away' after the usual 10 business day election period has passed.
45	Who must prove case	The term 'applicant' should be defined in this Bill.
59	General costs provision	The reversion back to costs rules that, at first instance, each party is to bear their own costs for a proceeding, is supported.