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central highlands regional council

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

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Dear Research Director,

SUBMISSION TO PLANNING BILL 2015

Central Highlands Regional Council ('the Council') welcomes the opportunity to make written representations to the Planning Bill 2015 introduced to Parliament on 12 November 2015.

The Council is of the opinion that it is imperative that the land use plans and associated statutory instruments (i.e. State Planning Policy, Strategic Framework and Planning Scheme) are robust, comprehensive and regularly reviewed to adapt to changing circumstances. Unfortunately, this does not occur in reality, particularly in regional areas where budgets and resources are limited and in a state of continual catch-up. Thus the provisions in the Act and regulating Development Assessment Rules need to be conservative without limiting flexibility in circumstances where an appropriate development is proposed.

The issues and matters raised in Council's submission are based on our experiences, which are different to that of South East and Coast Queensland Local Government Areas. Typically our economy and development industry is cyclical which can cause havoc in planning for the peaks and troughs.

Council commends the work commenced by the Department of State Development, Infrastructure and Planning and continued by the Department of Local Government, Infrastructure and Planning in the Planning reform for Queensland. In our submission to the Department of Local Government, Infrastructure and Planning on the draft Planning Bill 2015 we expressed our support for a number of provisions proposed by the Bill. Council also raised a number of concerns in this submission. On review of the Planning Bill 2015 introduced to Parliament we again provide the following comments:

S30 (6)(b) uses words 'substantially different' and 15%

The yield achievable is not substantially different from the yield achievable before the change, in relation to residential building work, if the gross floor area of the residential building –

(a) is not more than 2000sqm; and

(b) is reduced by not more than 15%.

Comment: It is appreciated that this section is in the context of compensation claims however it is expected that these provisions will be applied when considering whether a change to development, both during the assessment of an application and change to an approval, is substantially different development. Council does not object to this, just merely acknowledging that we expect that developers will also use these provisions in trying to justify changes.

It is understood that one of the aims with planning in the State of Queensland was to ensure consistency across Queensland Council's in the consideration and assessment of development applications. Statutory Guideline 06/09 was prepared by the State to assist in applicants and assessment managers determining if a proposed change to a development makes it 'substantially different'. It has been our experience, as it relates to the consideration of whether a development is 'substantially different', that Councils are interpreting these provisions very differently, varying between conservative and radical ends of the scale. This has led to confusion with developer's who own developments in numerous Council areas as to how a change to their approval or application is going to be treated. Whilst the Council is happy to continue to interpret these provisions, which we note are proposed to be included in the Development Assessment Rules, we believe that there will continue to be varying applications of whether a change to development is 'substantially different' which may likely continue to end up being decided by legal professionals.

S31 Right to compensation

(3) An affected owner may claim compensation in relation to development that becomes assessable development after an adverse planning change has effect, if:
(a) The local government refuses a superseded planning scheme request in relation to the development; and
(b) A development application has been made for the development; and
(c) The development application is:

(i) refused; or

(ii) approved with development conditions; or

(iii) approved in part with or without development conditions.

Comment: We find it very alarming that a developer is able to claim compensation following an adverse planning change when the development that has been sought is approved with conditions. It is appreciated that the adverse planning change may have seen a change from self-assessable development to code assessable development and standard conditions applied. Any condition applied to a development needs to comply with legislation and therefore be relevant and reasonable. As such no condition would be applied to a development that puts an unreasonable imposition onto the developer. In such circumstances the Council do not feel that it is reasonable for to be subjected to compensation claims. We do not support this at all.

S60 – Deciding development applications

(2) To the extent the application involves development that requires code assessment, the assessment manager, after carrying out the assessment-
(a) must decide to approve the application to the extent the development complies with all of the assessment benchmarks for the development; and
(b) may decide to approve the application even if the development does not comply with some or all of the assessment benchmarks; and

(c) may impose development conditions on an approval; and
(d) may, to the extent the development does not comply with some or all the assessment benchmarks, decide to refuse the application only if compliance cannot be achieved by imposing development conditions.

Comment: The Department of Infrastructure, Local Government and Planning sought comment on the provisions on deciding Code assessable development applications. Two options were proposed, Option 1, which has been carried forward into the Bill introduced to Parliament, has a presumption in favour of approval and Option 2 remained neutral.

The Planning Bill 2015 is the basis for a new piece of legislation. Legislation should not favouritise outcomes, this should be the job of Local Planning instruments.

Example, if Council receive a non-compliant Code assessable application Council may only refuse the development if compliance cannot be achieved by imposing development conditions. This is all well and good but in the example whereby Council receive a non-compliant Code assessable application in an area of high flood hazard and the proposal is for densities well in excess of what is envisioned in the high flood hazard area, Councils preferred option will naturally be to not support such a proposal. (Please note that the flood hazard overlay does not necessarily change it to being Impact). However in this circumstance it is expected that the refusal would be appealed in the Planning and Environment Court and due to the provision of 'may only refuse the development if compliance cannot be achieved by imposing development conditions' the court may find that you can condition the development to be at a compatible density with the zoning despite the presence of high flood hazard.

Or an alternate example where Council receive a non-compliant Code assessable application for a Shopping Centre. Based on the current market demand and supply of existing retail offering a Shopping Centre, as proposed in the subject application is not needed for another ten (10) years. In such a situation under the neutral wording for deciding Code assessable applications the Council would refuse the application and provide reasons for refusal. However with the favouritised wording, as proposed in the Planning Bill 2015, Council is forced to approve the development imposing conditions to address the non-compliance, which in such an example involves a condition restricting the timing of the commencement of use, i.e. in ten (10) years time when the need exists. The applicant lodges an appeal to the Planning and Environment Court on the grounds that this condition is not reasonable. The Court finds in favour of the applicant, that the condition is not reasonable, the development commences prematurely and devastates the retail market in the trade area.

The Council remains in favour of a neutral position in the Legislation, comparable to the below provisions, which was proposed as an option in the Draft Planning Bill 2015:

(2) To the extent standard/code assessment is required for the development, after carrying out the assessment, the assessment manager must decide –
(a) to approve all or part of the application; or
(b) to approve all or part of the application but impose development conditions on the approval; or
(c) refuse the application

S68 Development Assessment Rules
This section provides that the minister must make rules (the Development Assessment rules) for the development assessment process and includes a list of 'musts' and a separate list of 'mays' for what rules are to be made on. The Bill

introduced to Parliament only contains two (2) items for which the minister must make rules about:

(a) how notification is to be carried out for development applications for which public notification is required; and

(b) the consideration of properly made submissions.

Comment: We are incredibly concerned about the extent of items in the 'may' list (i.e. assessment timeframes, properly made applications and so on). If rules are not made on these items this allows Council's around Queensland to do things differently across the State which defeats the concept of a consistent approach to planning Statewide. We expect that, if this continues to be the aim of the planning reform, the list for must items be extended to ensure that Council's across Queensland deliver a consistent Planning system.

S112 Adopting Charges by resolution

3(b) An adopted charge must not be for… development in a priority development area under the *Economic Development Act 2012*.

Comment: As a Council with two priority development areas, Blackwater and Blackwater East, within our Local Government area we find this really concerning. In accordance with section 10(1)(f) of the *Economic Development Act 2012* the Minister may fix charges and other terms for the provision of infrastructure in Priority Development Areas. The Infrastructure Funding Framework sets out the infrastructure charging framework for each Priority Development Area. Appendix 1 of this document identifies that the basis for charges within the two (2) priority development areas within our Local Government area are as identified in the Local Government's *applicable infrastructure charging document for the area as at the date of the relevant Priority Development Area development approval*. The workability of s112(3)(b) is questioned if Council's must not adopt a charge for development in Priority Development Areas under the *Economic Development Act 2012* yet the Infrastructure Funding Framework under the *Economic Development Act 2012* prescribes that the applicable charges to these developments are as set out in Council's infrastructure charging document.

Further, the Council is required to maintain and deliver infrastructure in Priority Development Areas. We are also required to plan for when infrastructure is going to be delivered to ensure budgets are managed responsibly. How are Councils expected to comply with these legislated requirements if we cannot adopt a charge for the delivery of trunk infrastructure in Priority Development Areas?

It is acknowledged that the Council does not levy charges for development in a Priority Development Area. However do believe that Council's Charging Resolutions should be able to adopt charges for providing trunk infrastructure for development across all the areas which we are required to deliver infrastructure in.

S171 Application in response to show cause or enforcement notice

Uses the term 'reasonable excuse' in that the applicant cannot delay/withdraw the application unless they have a reasonable excuse.

Comment: Council has concerns around what is a 'reasonable excuse', different people think differently. For example, an applicant may believe that their pet dying is a reasonable excuse to delay an application for an unlawful land use. Is it expected that Councils accept this? Who will decide what is a 'reasonable excuse'? Is this a provision that will be applied consistently across Queensland to provide transparency or will each Council treat this differently? It would be greatly beneficial to provide an explanatory note or a definition in Schedule 2 of the Planning Bill 2015 to this effect.

Definition – Operational Work means work, other than building work or plumbing or drainage work, in, on, over or under premises that materially affects premises or use of premises.

Comment: This is a very simplified definition compared to the current definition of operational work as defined in the *Sustainable Planning Act 2009*. We believe that this will cause confusion as to what is considered operational works particularly when 'materially affect' or 'affect' are not defined. Is a road reserve considered a 'premises'? Does this mean developers no longer need to obtain an Operational Works approval for upgrades required to Council infrastructure? Further that Operational Works approval is not required to be obtained for works that allow taking or interfering with water? When considering the current definition in the *Sustainable Planning Act 2009* and the draft definition proposed in the Planning Bill 2015 the Council prefers the current definition, but acknowledges that it can be improved.

Additional comments

As a regional Council we have a relatively small Development Assessment Unit consisting of three (3) town planners and one (1) para-planner. To achieve the accelerated timeframes we would require amending the internal structure of our organisation to improve communications between other Council departments involved in the development assessment process. As such we appreciate the State's intention to have the Bill commence one (1) year from assent. We want to articulate our support for a minimum of six (6) months from assent to commencement, if Parliament is looking at reducing this timeframe.

Innovation: Council have raised this previously in our submission to the draft Planning and Development Bill 2014 and also to the draft Planning Bill 2015, our Council has observed the success of the development approvals issued under the Building Act and the process followed being development application lodged, development permit issued (approval) and final certification (compliance certificate). We feel this process would be effective in avoiding development offences under the draft Bill and costly legal proceedings. We encourage the Department and Parliament to rethink the provisions in the draft Bill relating to acting on a development approval and achieving compliance. We acknowledge that this will primarily only relate to Material Change of Uses; by way of explanation an applicant must obtain a Compliance Certificate from Council prior to commencing the use. This will also assist in any compliance actions that may need to be taken at a later date as there will be records of when the compliance was initially achieved.

Conclusion

Thank-you for providing the opportunity to make comments on the Planning Bill 2015. We look forward to following this committee inquiry and hopefully seeing the assent of the Planning Bill 2015.

Yours faithfully

Scott Mason
Chief Executive Officer 15/1/16