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Your Ref: ---

18 January 2016

Infrastructure, Planning & Natural Resources Committee
Parliament House
BRISBANE QLD 4000

Dear Sir / Madam

DRAFT PLANNING BILLS

Council understands the Queensland State Government has introduced a series of bills before parliament in order to replace the *Sustainable Planning Act 2009* (SPA) and the *Sustainable Planning Regulation 2009*. As part of this process, Council notes the Infrastructure, Planning and Natural Resources Committee is undertaking consultation from November 2015 to 18 January 2016.

Council has elected to take this opportunity to review the draft legislation and provide some comment based on its experiences with the current Sustainable Planning Act and Regulation. It is noted that the below comments are in relation to the bills introduced by the Government on 12 November 2015. It is noted that many similarities exist between the private members bills tabled by the Member for Clayfield, Mr Tim Nicholls MP on 4 June 2015 and those subsequently tabled by the Government. The following provides a list of some of Council's key concerns and questions:

Draft Planning Bill

Chapter 3

1. Exemption Certificates (s44)

It is noted that the concept of Exemption Certificates has been retained in the latest version of the proposed Bill. Council understands that the Assessment Manager may have the power to issue an Exemption Certificate for minor development in the event the circumstances under which the development was made Assessable Development no longer apply, or in the event the Development was categorised in error.

Council is concerned about the pressure its Planning Officers may receive from outside forces, including Developers, to circumvent the planning process by issuing an Exemption Certificate for a particular development. It is considered that it in many cases this process may mask a larger issue of inconsistencies with planning instruments.

2. Assessment Rules for Standard/Code Assessment (s58)

Upon review of the two draft Standard/Code Assessment Rules given in the proposed Bill, Council believes that Option1 is the preferred option. It is considered this option differentiates this category of assessment from Merit/Impact assessment by reinforcing the assessment of the development application against the assessment benchmarks and retaining the presumption in favour of approval which is taken to be the intent of the assessment category. Council notes the inclusion of a statement to allow the resolution of conflicts between assessment benchmarks.



3. Attachment of Development Approval to Premises and not the Land (s71)

It is noted that this change was also present in previous versions of the proposed Bill. Council can appreciate that tying the approval to the premises instead of the land could be beneficial in reinforcing the point that development approval does not imply proprietary rights to the land or ownership of resources such as quarry materials present on the land.

4. Change Applications (s76-80)

The proposed Bill allows for the assessment of two types of changes to development approvals after the end of the Applicant's appeal period. Council notes that the provisions for minor changes are generally consistent with the existing provisions under the *Sustainable Planning Act 2009*, with the exception of some changes regarding referral agencies. The ability to assess changes that are not minor differs from the previous legislation. Council notes that, under SPA, a change that is not minor is to be assessed as an entirely new development application.

Under the proposed Bill a new development application is not required for changes to a development approval that are not minor in nature. It is understood that such a change is to be referred and decided in the same fashion as a development application; however, a review of the Bill, and Draft Assessment Rules, indicates that the Further Information Steps do not appear to apply to Change Applications. In past experience Council notes that changes to development approvals are often made by the property owners, not private planning firms, and can be made many years after the development permit is issued. As such they can be of poorer quality and require additional information before assessment can commence. Council considers that major changes are best assessed as new development applications where Council has the opportunity to request further information from the Applicant. It is noted that the proposed system may not streamline the change process and may result in delays, or in Councils exceeding their assessment timeframes.

It should be noted; however, that Council welcomes the additional guidance provided in Schedule 1 of the Draft Development Assessment Rules regarding what constitutes a substantially different development for minor changes to development approvals.

5. Currency Periods (s83)

It is understood that the proposed Planning Bill will increase the currency period for Material Change of Use approvals to six (6) years, with Reconfiguration of a Lot approvals to four (4) years and other parts of approvals to two (2) years. Council considers that the existing SPA timeframes are sufficient to enable development to be undertaken or substantially started. It is noted the longer the currency period, the higher the probability that legislation and planning instruments will change in the meantime which could lead to difficulties with associated approvals and any subsequent Change Applications.

Additionally, where Infrastructure Charges are payable prior to the change of use of a site, or prior to Council endorsing the plan of subdivision, Local Governments may find that, due to the time that has passed, the levied charge is no longer sufficient to fund the provision of infrastructure that may be expected.

Another problem Council seeks to avoid is development approvals being issued but never enacted. It is considered that the four year timeframe provides the necessary impetus to encourage development to be enacted in a timely manner. This is of particular concern in rural and regional areas that may already be experiencing decline in other sectors.

Chapter 4

6. Enforcement Notices (s165 - 166)

Council welcomes the clarification regarding the instances in which an Enforcement Notice can be issued without first issuing a Show Cause Notice. Similarly, Council acknowledge the benefit of greater clarification of what an Enforcement Notice can require a person to do.

Draft Assessment Rules

Division 1- Application Step

7. Deemed Properly Made Period

Upon review of the Draft Development Assessment Rules Council notes the proposed introduction of a deemed properly made period commencing at the point of lodgement in which the Assessment Manager has five (5) Business Days in which to provide the Applicant with an Action Notice (Not Properly Made Notice) or else the Application will be deemed properly made. This is of serious concern to Council. In rural and regional areas, with a lack of professional private planning, drafting and engineering firms, the Not Properly Made and Information Request stages provides one of the few opportunities for Council to improve the standard of the development applications it receives. It is submitted that by introducing a deemed properly made mechanism many rural and regional Councils, with limited staff numbers and resources, may issue Action Notices as a matter of course in an effort to give themselves more time to assess applications. It is considered that this situation is contrary to the intent of the legislation. Council is of the opinion that the introduction of this provision will not lead to shorter assessment times and will cause unnecessary concern for both Applicants and Council Officers.

Division 2 – Opt-out of Further Information Step

8. Information Requests

Further to the above, it is noted that the current version of the Bill has retained the capacity for Applicants to opt-out of the Further Information step of the assessment process. While Council appreciates that the Applicant may only opt-out provided they can furnish evidence that they have discussed the proposal with Council, for example at a pre-lodgement meeting, the experience of regional councils is that applicants are often unwilling to attend pre-lodgement meetings, and in many cases to follow the advice and recommendations provided by Council Officers. In some instances Applicants will still request certain aspects to be conditioned in an effort to gain approval quickly for their client or in an effort not to exceed their quoted fee amount. It is considered that the an Information Request, with timeframe, as stipulated under the current IDAS process, is the most effective method Council has experienced which improves the quality of both the development application and the resulting development.

9. General Comments

It is noted there has been a general reduction in the length of the mandatory timeframes for Assessment Managers when assessing development applications, change applications and extension applications under the proposed Bill as compared to SPA.

As noted above, rural and regional Local Governments have less access to staff and resources than those in other areas. In addition to this many Council Planning Officers do not have the delegated authority to decide applications. This necessitates a full report being prepared for each item to be tabled before a Council meeting approximately once a fortnight. Taking into consideration agenda closing times and other briefings the process of taking an application to a Council meeting for decision can take approximately 15 business days, leaving the officer little time to review the responses from Referral Agencies or Information Requests. Given that each officer may take several items to each meeting Council is very concerned about the reduction of any assessment timeframes.

Additionally, it is noted that Draft Development Assessment Rules do not include provisions to extend timeframes without the Applicant's consent. It can be appreciated that in most cases Applicants are reluctant to permit the Assessment Manager to extend their timeframes and it is noted that the process to gain the Applicant's agreement for an extension in itself takes time. Council is of the opinion that the current provisions for extending timeframes provide necessary flexibility to the assessment process and believes that a removal of these provisions would be to the detriment of the assessment process and development approved as a result of this process.

Council acknowledges that the replacement and amendment of legislation cannot be avoided. Council appreciates the efforts of the Department of Infrastructure, Local Government and Planning through its presentations throughout the regional areas and initiatives such as the simulcast Question and Answer Sessions held recently. Council looks forward to further updates in the near future as to the progress of the draft Bill. Council believes the timely publication of information and consultation prior to the commencement of new legislation is vital for successful implementation. It is hoped that the Department will continue to give the issues faced by rural and regional Councils full consideration.

Yours faithfully



Emilio Cianetti
Chief Executive Officer