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Urban Development Institute of Australia
QUEENSLAND

GPO Box 2279
Brisbane QLD 4001
Level 12, 120 Edward Street
Brisbane QLD 4000

T: 07 3229 1589
F: 07 3229 7857
E: udia@udiaqld.com.au

www.udiaqld.com.au

ACN 010 007 084
ABN 32 885 108 968

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Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
Brisbane Qld 4000

BY POST/EMAIL – pnrc@parliament.qld.gov.au

Dear Committee,

Submission on the Planning Bills

This submission is made to you following an examination by the Urban Development Institute of Australia (Qld) (the Institute) of the contents of the Planning Bill 2015 (the Planning Bill), the Planning and Environment Court Bill 2015 (PECB) and the Planning (Consequential) and Other Legislation Amendment Bill 2015 (PCOLAB). The Institute's submission on supporting instruments released by the Department on 23 November will be covered in a separate submission made directly to the Department of Infrastructure, Local Government and Planning.

The current planning reform agenda and the resulting legislation is crucially important to the Queensland economy and the future of communities throughout the state. It directly affects our members' ability to plan, design and deliver appropriate, diverse and affordable housing for Queenslanders, and importantly, impacts on lending decisions made by financial institutions. At the Queensland Planning Summit 2013, UDIA (Qld) was the first industry group to call for a substantive review of the current planning legislation following industry concerns regarding the level of complexity and prescriptive nature of the Sustainable Planning Act 2009 (the SPA). Over time, SPA and its predecessor (the Integrated Planning Act 1997) have become increasingly cumbersome, adding significant time delays and cost to development projects. Additional prescription and complexity has also reduced the planning system's capacity to deliver responsive performance based planning outcomes, resulting in perverse outcomes and threatening the delivery of diverse housing and thriving communities. While the Institute welcomes the Government's commitment to planning reform, the Institute has significant concerns regarding the Planning Bill.

The role of the property development industry in driving growth and jobs cannot be understated. UDIA (Qld) research reveals that Queensland's property development industry typically ranks as the fourth largest contributor to Gross State Product (GSP) and jobs. Approximately one in ten Queensland workers is employed in property development and many more jobs are indirectly created and sustained from property development. For every $1 million in turnover generated by Queensland's development industry, three direct full time equivalent jobs are created and sustained1. Not only is continued health of the property development industry important for growth and jobs, it is essential for generating the revenue required to deliver community services and build productivity enhancing infrastructure.

More than ever, Queensland's future economic prosperity and the subsequent sustainability depend on our ability to boost productivity, growth and employment in the non-mining sectors of the economy. Continued growth of the industry is not assured and continued investment in new housing is needed to ensure the development of new employment centres throughout Queensland is brought forward. To facilitate this and

[1] Economic Impact of the Development Industry in Queensland (Applied Economic Research, 2012)

remove some current impediments, a more efficient planning system is needed to encourage the supply of more housing and therefore jobs growth.

Sensible planning reforms premised on robust planning principles have the potential to deliver increased job creation, growth and diverse and affordable housing for all Queenslanders. Further, the Planning Bill and PECB have the potential to deliver an improved planning culture, better planning schemes and improved planning and development outcomes that meet community expectations.

The following submission made on behalf of the Institute's members, provides feedback on the Planning Bills and identifies aspects which are likely to impede the ability of the industry to build affordable and diverse communities and continue to be a leading generator of jobs and economic activity for the State. Development projects are almost without exception funded by lending institutions. A key component of lending criteria is an assessment of the risk and complexity associated with the planning application and approvals process. Any perceived or actual additional complexity or burden imposed by the introduction of new planning legislation is likely to threaten future investment in Queensland and redirection of those funds to other Australian States. The Institute's submission highlights those areas which add complexity or risk to the process and threaten to further reduce development industry investment and growth in Queensland.

The Institute's concerns are detailed below, however in summary, relate to:

- Weakening of the framework for code assessment benchmarks, allowing local governments to classify higher order provisions of schemes as an assessment benchmark and creating significant planning risk for code assessable applications.
- Greater scope given for local government to make changes to a planning scheme in response to natural hazard risk without triggering compensation to the land owner.
- The reintroduction of land surrender provision into the Coastal Protection and Management Act 1995, effectively creating defacto planning processes which subvert the planning system, causing confusion and delay.
- Alteration of costs rules, removing the ability to recover costs incurred where a statutory body conducts itself improperly.
- The requirement for owner's consent on State owned land prior to an application considered to be 'properly made' adding further risk and uncertainty and resulting in delays which impacts on the ability to secure development financing.
- The removal of roll-over provisions which fails to recognise economic uncertainty and the significant investment, time and risk involved with securing development approvals.
- No ability for a lapsed approval to be 'retrospectively revived' by agreement between a local government and a developer.
- An extended period of transition, limiting the ability for the identification and amendment of issues related to the Act and compromising the value of planning reform to the industry.
- Lack of requirements to ensure that local planning schemes remain current and are of high quality, providing certainty for the industry and improving transparency for local communities.

The Institute is supportive of a number of aspects of the Planning Bill including:

- Replacement of the 'conflict' and 'sufficient grounds' tests with simpler decision rules that will encourage performance based planning, allowing for the proper balancing of all relevant factors, and reducing costs associated with technical legal arguments.

- Flexibility and associated reductions in risk and cost associated with change applications, extensions, properly made requirements, public notification, information requests and missed referrals.
- Removal of unnecessary planning instruments including State Planning Regulatory Provisions and Queensland Planning Provisions, reducing the complexity of the planning system.
- Retention of the approach in the SPA to 'deemed approvals' and 'preliminary approvals', providing continuity and clarity for the industry.
- Streamlining of the process for making and amending planning schemes to ensure schemes can be kept up to date and responsive to the needs of the communities and policy changes.

The Institute's concerns are detailed in the attached document. The Institute is appreciative of the opportunity to comment on the Bills and welcomes the opportunity to provide more detailed feedback to the Committee.

Yours sincerely
Urban Development Institute of Australia (Queensland)

Marina Vit
Chief Executive Officer

Summary of UDIA (Qld) Recommendations By Bill

Planning Bill 2015

- Reinstate the comparable provisions in the SPA (section 706(1)(i)(i)) which preclude compensation for planning scheme changes related to natural hazard risk only if the risk "could not have been significantly reduced by conditions attached to a development approval".

  OR amend s30(4)(e) to read:

  (e) is made –

  (i) to reduce a material risk of serious harm to persons or property on the premises from natural events or processes; and

  (ii) the risk cannot be adequately mitigated by a planning change involving the application of objective performance measures or the imposition of lawful development conditions; and

  (iii) before adopting the planning change the local government considered a risk assessment that:

  (1) was undertaken in good faith by an appropriately qualified independent person;
  (2) stated that the risk could not be adequately mitigated through measures such as those mentioned in (ii);
  (3) is publicly exhibited with the proposed planning change; and
  (4) remains available for the public scrutiny after adoption of the planning change.

- Insert a new Section 43(4)(d) as follows – *"(d) may not, for development that requires code assessment, set out assessment benchmarks other than applicable codes"*
- Amend Section 45(3) (a) to read – *"(a) against the assessment benchmarks for code assessment in a categorising instrument for the development"*
- Amend section 51(2) such that it does not apply to State owned land.
- Amend Section 60(2)(b) – *"(b) may decide to approve the application even if the development does not comply with some or all of the assessment benchmarks if a relevant matter, other than a person's personal circumstances financial or otherwise, justifies approval"* and expand the list of examples already given.
- Section 85(1) of the Planning Bill be reworded to reinforce the intent that lodgement of a survey plan or commencement of the first use within the currency period keeps the approval alive. This will require deletion of the words "part of a", replacing "any part of the" with "a" in s85(1)(a) and (b), deleting "part of the" from s85(1)(c) and deleting "part of" from s85(2).
- Amend section 87 of the Planning Bill to make it clear that a person may make an extension application after an approval has lapsed so long as the assessment manager agrees. This should benefit from the allowance in section 87(4) that the assessment manager be empowered to agree even if the development approval was given because of an order of the Court.
- Amend section 128 to:

  (4) *"the local government must pay the refund under subsection (3)(b) within 2 years from when the infrastructure is provided or five years from the issuing of the development approval, whichever is the lesser."*

- Amend s138(2) to:

  "The application (the conversion application) must be made to the local government, in writing, within 1 year after the Infrastructure charges notice is issued."

- Insert a definition of "applicable code" in the same form as the definition in schedule 3 of the SPA ***"applicable code**, for development, means a code, including a concurrence agency code, that can reasonably be identified as applying to the development."*
- Insert a definition of "code" in the same form as the definition in schedule 3 of the SPA ***"code** means a document or part of a document identified as a code -*
  - *a) in a planning instrument; or*
  - *b) for IDAS under this or another Act; or*
  - *c) in a preliminary approval to which section 242 applies."*
- Reinstate the roll-over provisions contained within the SPA, extending the time limit from two to three years or at any stage so long as the assessment manager agrees.
- Amend the Explanatory Notes appropriately for all of the above changes to reflect the policy intent of retaining the status quo for code assessment. In particular the Explanatory Notes for "assessment benchmarks" on page 52 and for "other relevant matters" on page 53 will have to be redrafted.
- The Act take effect 6 months from the date of the Bill being passed by Parliament, unless substantial changes have been made to the Bill. If substantial changes have been made, the proposed period of 12 months should be maintained.
- Include further requirements in the Planning Bill or supporting instruments that ensure high quality and up to date local planning schemes. Requirements should include that:
  - Following amendments to Regional Plans, local governments amend their local planning schemes within two years to reflect these changes.
  - Entire planning schemes be subjected to a formal 'State Interest Review' every five years (regardless of whether amendments to an SPP have occurred during this period). This will have numerous benefits including:
    - ensuring that schemes are amended in a more timely manner following changes to the SPP;
    - identifying missed issues in the original State Interest Check to be rectified;
    - ensuring that the cumulative effect of minor amendments to planning schemes are able to be assessed to ensure they are not contradictory to State Interests; and
    - providing a service and resource to local government to enable them to deliver more timely reflection of State Interests and deliver continual improvement.
  - That local government be required to produce a bi-annual land availability report. This report should be required to demonstrate that there is available sufficiently zoned land capable of being economically serviced to cover ten years of expected demand. If sufficient supply cannot be demonstrated, planning scheme amendments should be required.

Planning and Environment Court Bill 2015

- Amend section 60(1) of the PECB by inserting a new sub-paragraph (a) and (b) as follows:

  (a) the proceeding is about development that is subject to code assessment under the Planning Act;
  (b) the proceeding is an application seeking declarations under part 2 division 3 of this Act.

- Amend s60(1)(a) to potentially apply to conduct engaged in by any party to a proceeding that is improper. To that end, the section should be reworded as follows:

  "The Planning and Environment Court considers that proceeding was started, continued, or conducted by a party to the proceeding for an improper purpose including, for example, to delay or obstruct."

Planning (Consequential) and Other Legislation Amendment Bill 2015

- Maintain current arrangements in relation to land surrender.

Code and Impact Assessment

Code assessment and compliance assessment are considered to be bounded assessments. In particular, code assessment is designed to deal with development that is considered appropriate for a locality and enable quicker assessment than impact assessment. Code assessable developments are considered by the industry to involve significantly less financial and planning risk and complexity than impact assessable applications. As currently drafted, the Planning Bill places this type of assessment under threat.

Currently, the term "code" is not defined and assessment benchmarks are not exclusively tied to codes. As a result, it is possible for assessment benchmarks for a code assessable development to identify an entire planning scheme or broad and contestable policy statements. This broadening of what is considered as 'bounds' or parameters for a code assessment creates significant complexity and risk for development projects and will make it difficult for developers to attract financing for projects in Queensland.

This shift represents a significant move away from the core concept of code assessment under both the SPA and IPA where code assessable development was confined to assessment against codes which were specific components of a planning instrument. Despite the considerable broadening of what a code assessable application might be considered against, there is no ability under code assessment to consider other relevant factors that may balance the assessment, as exists under impact assessment. This precludes an assessment manager from balancing the benchmarks with community need or other associated broader benefits.

The Institute is strongly opposed to changing code assessment in the way suggested in the explanatory notes whereby it can morph into a category of assessment that is the equivalent of impact assessment in everything but the requirement for public notification. Such a policy change has never been part of the consultation on the 2014 Planning and Development Bill nor was it raised during discussions about the draft 2015 Planning Bill. The current approach to code assessment must be carried forward in the Planning Bill 2015.

Currently with the SPA, code assessment can take account of other relevant matters (presently called "sufficient grounds"). This provision is not included in the Planning Bill and should be reinstated, regardless of the need to limit code assessment to applicable codes. The change was not identified in the previous draft Bill, however it is clear on pages 52 and 53 of the explanatory notes that is not consistent nor reflective of the understood policy position under the consultation draft Bill and the Institute is not aware of reference to this change during the consultation process.

The Institute believes the above changes may be unintended and strongly suggests that there be no change from the intent expressed in the explanatory notes issued for the 2014 Bill relating to standard assessment.

UDIA (Qld) Recommendations:

- Insert a new Section 43(4)(d) as follows – *"(d) may not, for development that requires code assessment, set out assessment benchmarks other than applicable codes"*

- Insert a definition of "applicable code" in the same form as the definition in schedule 3 of the SPA ***"applicable code**, for development, means a code, including a concurrence agency code, that can reasonably be identified as applying to the development."*

- Insert a definition of "code" in the same form as the definition in schedule 3 of the SPA ***"code** means a document or part of a document identified as a code -*
  - *d) in a planning instrument; or*
  - *e) for IDAS under this or another Act; or*
  - *f) in a preliminary approval to which section 242 applies."*

- Amend Section 45(3) (a) to read – *"(a) against the assessment benchmarks for code assessment in a categorising instrument for the development"*

- Amend Section 60(2)(b) – *"(b) may decide to approve the application even if the development does not comply with some or all of the assessment benchmarks if a relevant matter, other than a person's personal circumstances financial or otherwise, justifies approval"* and expand the list of examples already given.

- Amend the Explanatory Notes appropriately for all of the above changes to reflect the policy intent of retaining the status quo for code assessment. In particular the Explanatory Notes for "assessment benchmarks" on page 52 and for "other relevant matters" on page 53 will have to be redrafted.

Compensation Arrangements in Relation to Natural Hazards

The Institute while noting the favourable amendments made to the equivalent of section 30(e)(i) in the consultation draft of the Bill, does not support the policy intent of the section. The section removes compensation rights for properties which have been adversely affected by planning scheme changes responsive to natural hazard risk without including adequate enforceable safeguards against abuse of the provisions by local governments. While it is accepted that planning schemes play a role in regulating development to prevent development being undertaken on sites that are physically unsuitable, the Institute strongly believes that the current arrangements offer protection for both the community and the industry and have been the basis on which investment decisions have been made.

The Institute believes that the approach adopted in the Planning Bill provides increased scope for a local government to down-zone land in response a perceived hazard without triggering compensation. The decision to reduce the capacity for landholders to seek compensation as a result of an adverse planning change, removes certainty and will have significant flow-on impacts to the willingness of some financial lending institutions to grant finance in some areas of Queensland.

The right to lodge an application and appeal the decision, including conditions, is a core value of the system and ensures its accountability. Removing the opportunity to address a hazard through appealable conditions would substantially dilute the test of whether the local government (i) has accurate natural hazard mapping and (ii) has considered and selected the correct technical requirements and solutions for each affected site. Our experience with various Government mapping, including planning scheme overlay mapping, indicates that mapping is often imprecise and very broad, rarely undertaken at a site specific scale. It also potentially limits technical solutions to those that the local government has foreseen and

removes the opportunity for new innovative solutions to be found to address an issue, and then for disagreements about those conditions to be tested in Court. It is important that we maintain this level of protection to land owners and accountability in the system.

The Institute is also concerned about the drafting of section 30(5) which requires a report to be prepared by a local government assessing alternatives. This section does not impose any enforceable requirements related to the contents of the report and does not require justification of the adverse planning change (e.g. overlay mapping, down zoning to the limited development zone). Additionally, the timing of the report appears to coincide with the planning change proposed to be made. It is unlikely that given the timeframe and also the resource and capacity constraints of local governments, that mitigation measures will be fully explored. If the Planning Bill and Rules were to require public notification of the assessment report at the time of publicly notifying the proposed planning change (which it should), it would unnecessarily and prematurely require affected land holders to consider the range of hypothetical development scenarios for their land in order to provide an informed response to the proposed adverse planning change.

These additional specific concerns with the proposed new approach simply reinforce the Institute's long held view that the current approach under the SPA is appropriate and that there is no case for legislative change.

UDIA (Qld) Recommendations:

- Reinstate the comparable provisions in the SPA (section 706(1)(i)(i)) which preclude compensation for planning scheme changes related to natural hazard risk only if the risk "could not have been significantly reduced by conditions attached to a development approval".

- Alternatively, amend s30(4)(e) to read:

  (e) is made –

  (i) to reduce a material risk of serious harm to persons or property on the premises from natural events or processes; and

  (ii) the risk cannot be adequately mitigated by a planning change involving the application of objective performance measures or the imposition of lawful development conditions; and

  (iii) before adopting the planning change the local government considered a risk assessment that:

  (5) was undertaken in good faith by an appropriately qualified independent person;
  (6) stated that the risk could not be adequately mitigated through measures such as those mentioned in (ii);
  (7) is publicly exhibited with the proposed planning change; and
  (8) remains available for the public scrutiny after adoption of the planning change.

Planning (Consequential) and Other Legislation Amendment Bill 2015

The Institute notes that the Planning (Consequential) and Other Legislation Amendment Bill 2015 (PCOLAB) provides for an arrangement for land surrender for coastal management purposes, regarding applications for reconfiguration of a lot for land that is within the coastal management district and in an erosion prone

area or within 40 metres of the foreshore (clause 145). While land surrender arrangements under the Coastal Protection and Management Act 1995 (Coastal Act) have been in the Act since 2001, the provisions were rendered nonoperational with the introduction of the coordinated State assessment and referral functions through amendments to the Sustainable Planning Act 2009 in 2012. PCOLAB re-operationalises the issue and introduces an opportunity for the owner of affected land to make submissions in response to the land surrender notice.

Under these provisions there is no right of appeal against a land surrender requirement, nor is there a right to compensation for land surrendered. The Institute is strongly opposed to this clause which effectively allows the Minister of Environment and Heritage Protection to be able to force the surrender of land with no rights to compensation. The Institute is also opposed to legislation which creates defecto planning processes which pervert the core planning system. Numerous legislation and regulation already exist which operate outside planning system including matters related to nature conservation, vegetation and coastal management, adding complexity.

UDIA (Qld) Recommendation:

- Maintain current arrangements in relation to land surrender.

Costs in the Planning and Environment Court

The Institute opposes the orders for costs outlined in section 60 of the PECB, believing that the existing SPA arrangements represent a sensible middle ground between the provisions contained within the PECB and the other extreme option of 'costs follow the event'.

The changes made in 2012 addressed significant concerns including that commercial competitors were using the Court to delay development in the knowledge that they will not be penalised with costs. This was harming economic development and job creation. Another concern prior to the 2012 changes to the SPA was that well organised third parties were frequently litigating on very weak town planning grounds in relation to approved developments on the basis of a general philosophical objection to development without any real prospect of costs being awarded against them. This was harming housing affordability, in particular by limiting much needed infill development, adding considerable risk to the development process. Whilst prior to 2012 (and under the PECB) costs could be awarded in the event of "frivolous or vexatious" actions, this threshold has been shown to be so high that submitters with cases run on very weak grounds face negligible risk of an adverse costs order.

We are of the view that existing costs arrangements are balanced and their operation since 2012 demonstrates that members of the community should not fear costs being awarded against them so long as they take some basic steps to evaluate their case and ascertain whether there are any legitimate town planning grounds for their appeal. Current arrangements provide the community with free access to 'without prejudice' conferences and mediation services offered by the Court ADR Registrar. These ADR services in practice provide members of the community with an opportunity to ascertain whether there are any legitimate town planning grounds to their case and provide them with the opportunity to reassess whether or not they should proceed to Court. In fact, the 2012 changes to costs provisions have reportedly had the effect of making 'without prejudice' conferences more useful and productive and thus more likely to result in an early resolution.

The Courts are taking a very reasonable approach to costs and the Institute is aware of just seven costs orders since the 2012 changes. Adverse costs orders have been awarded in five cases against local governments and commercial competitors and two cases against 'community groups'. Under existing SPA provisions there have been no cases of costs being awarded against individual members of the community. Further, neither of the two cases against 'community groups' were merits based appeals but instead involved a declaratory proceeding and a case where a group improperly sought to become a party to a permissible change request.

In the event that the above proposal to retain the existing SPA provisions are not accepted, at a minimum, the Institute recommends two specific changes, outlined below.

Limiting cost rule changes to code assessable appeals

It is recommended that the Government amend the PECB so as to confine proposed changes to the costs rules to impact assessable development and allow the Court to have general discretion to award costs in respect of code assessable development appeals and declaratory proceedings. Excluding code assessable development appeals (which do not involve submitters) and declaratory proceedings would not, in our view, constitute a departure from the Government's election commitment.

Excluding appeals relating to development that is code assessable or are declaratory proceedings is appropriate because the proceedings cannot determine merit issues. Applicable regulations may make a development code assessable or this may arise because the local government, duly elected, has adopted a local planning instrument that makes development code assessable. Recognising that there may be circumstances where the use by a citizen of declaratory proceedings to clarify rights is an appropriate course, and balancing this against the rights of another citizen to apply for assessable development and have the development application processed according to law within the appropriate lawful timeframe, there is clear scope for the Court to be able to apply general discretion in deciding who should pay the costs of such proceedings. This is particularly so in the context where declaratory proceedings may be used to advantage by commercial competitors, and also in light of evidence that such proceedings are starting to take the form of merit hearings with extensive expert evidence being called by applicants in order to establish the factual basis for the declaration, resulting in respondents incurring considerable costs in having to match the expert evidence of the applicant for the declaration.

UDIA (Qld) Recommendation:

- Amend section 60(1) of the PECB by inserting a new sub-paragraph (a) and (b) as follows:
  - (c) the proceeding is about development that is subject to code assessment under the Planning Act;
  - (d) the proceeding is an application seeking declarations under part 2 division 3 of this Act.

Discretion to award costs when a local government, State Government or statutory authority are party to a proceeding

There is an important legal principle that Governments ought to be model litigants. There is a strong case, therefore, that any cost rules reflect that the standard that Government should be held to is higher than for others. One of the cases where costs were awarded against a local government following the 2012 changes to SPA was *Hydrox Nominees Pty Ltd v Noosa Shire Council (No 2)* [2014] QPEC 60. In that case Council was ordered to pay 85 per cent of Hydrox's cost of the appeal. Key facts from the case include:

- Hydrox appealed against Council's refusal of a development application for a Masters store;
- Council's refusal was against the advice of the assessment manager who recommended approval;
- The appellant was successful in all but one of the areas which had been in dispute. The parties attended mediation;
- Having regard to the relative success of the strength of its case and the corresponding weakness of the Council's case (which had received adverse advice) *"on balance, the decision by the respondent to put the appellant to the expense of vindicating its strong position by hearing, the matter of fairness in the particular circumstances requires an order that the respondent pays the successful appellant's costs, notwithstanding the matters that were urged on the respondent's behalf".*

The Institute believes that the above case would have fallen short of the 'vexatious and frivolous' test and therefore had the provisions in the PECB been in force, an adverse costs order would not have been made. The Institute submits the Court should have discretion to award costs when such behaviour is demonstrated.

UDIA (Qld) Recommendation:

- Amend s60(1)(a) to potentially apply to conduct engaged in by any party to a proceeding that is improper. To that end, the section should be reworded as follows:

  "The Planning and Environment Court considers that proceeding was started, continued, or conducted by a party to the proceeding for an improper purpose including, for example, to delay or obstruct."

Consent for state owned land

The Institute notes that section 51(2) requires an application to be accompanied by evidence of the consent of the owner of the land for it to be properly made. This requirement also exists under the SPA. This is currently creating significant issues for the industry, with lending institutions aware of the time delays and increased holding costs associated with securing consent from the State Government. This continued risk threatens the ability of the industry to secure finance and continue to invest in Queensland.

Applicants have historically experienced unreasonable delays in receiving owner's consent for State owned land. Often, this is the only matter preventing an application from being properly made and can result in considerable delays and holding costs to applicants. For example, receiving owner's consent a minor application can take months and potentially delay the lodging of a development application. A development approval does not grant proprietorial rights and therefore legislation ought to simply contain a section stating that owner's consent from the State must be obtained at any time prior to a development approval becoming effective. This reform would remove the risk of unnecessary delays and reduce holding costs for developers.

It should be noted that changes made to the SPA in 2012 that removed the requirement to obtain a resource entitlement prior to lodging a development application, have not had the desired effect in many cases. This has been primarily due to the reluctance of some State agencies to act in the spirit of the changes. For example, our members have reported that in many cases, the Department of Natural Resources and Mines has continued to require the same process that was required under the old 'application for resource entitlement' to occur as a prerequisite for providing owner's consent.

UDIA (Qld) Recommendation:

- Amend section 51(2) such that it does not apply to State owned land.

Currency periods

The Institute supports the extension of currency periods contained within section 86 of the Planning Bill, however it is not supportive of the removal of 'roll-over' provisions which currently exist under the SPA. These roll-over provisions allowed proponents to extend the currency of their approvals providing greater flexibility in times of economic fluctuations. The increases to currency periods in the Planning Bill are not sufficient to compensate for the loss of 'roll-over' provisions. On balance, the changes are a backward step relative to the SPA in relation to risk and cost.

In earlier drafts, the provisions relating to lapsing of development approvals included the mandatory notification by the assessment manager of any proposed lapsing of an approval, with opportunity to object or make submissions, prior to it occurring. This, to some extent, together with the extension of currency periods, balanced the removal of roll-over provisions. In the current Bill, this proposal to notify prospective lapsing (which was and is supported by the Institute) has been deleted but the roll-over provisions have not been reinstated. The Institute strongly urges the reinstatement of roll-over provisions or the introduction of a notification and submission process with appeal rights prior to a development approval lapsing.

The abolition of 'roll-over' provisions fails to acknowledge the significant investment, time and risk land holders undertake when obtaining development approvals and the fact that economic conditions can determine the timing for the realisation of approvals sought. The ability for an approval to retain currency can be critical to a land owner's investment and value. The inclusion of roll-over provisions in the Planning Bill should contain a time limit of three years. This will reduce some of the time and associated resources currently invested by both applicants and local governments in dealing with and auctioning requests for changes or time extensions.

UDIA (Qld) Recommendation:

- Reinstate the roll-over provisions contained within the SPA, extending the time limit from two to three years or at any stage so long as the assessment manager agrees.

Lapsing approvals and revival powers

The Institute recommends that the Planning Bill be amended to allow for a lapsed approval to be 'retrospectively revived' at any time by agreement between the applicant and the local government. It has not been uncommon under the SPA for approvals to have lapsed due to administrative oversight or when there has been a change in site ownership or change in consultants on a project. This can often occur

without the local government or owners' knowledge. In such cases, applicants have had to go through a time consuming and costly application process again to obtain an approval, adding to the cost of housing. The other course available to applicants is to make an application to the Court to have the lapsed approval revived. Both of these ways of reviving an application are costly and a significant waste of resources for applicants, local governments or the Court. This seems illogical when a local government and applicant are both supportive of its revival.

Importantly these revival powers should be captured by the transitional provisions so that local government can revive a lapsed SPA approval retrospectively following the introduction of new legislation.

Further, it is understood that under the SPA lapsing provisions, a RoL approval for a staged submission remains current provided that 'a plan' for the reconfiguration (i.e. survey plan) is given to local government within the currency period. This means that a RoL approval will not lapse provided a survey plan is provided to the local government for the first stage. This approach is strongly supported as it allows for the continuation of an existing approval as long as a survey plan has been lodged for sealing. The Institute is concerned with the wording of section 85(1) of the Planning Bill which potentially restricts the operation of this provision in respect of staged MCU / ROL approvals. It states that a part of a development approval lapses at the end of the currency period for any part of the approval relating to an MCU (section 85(1)(a)) or RoL (section 85(1)(b)) in certain circumstances.

It is not clear why the provision has introduced the concept of "part of a development approval" (section 85(2)). The Institute is concerned that this provision may cause subsequent stages of a staged MCU or RoL approval to lapse if the survey plan for a subsequent stage or the first use of a subsequent stage does not commence within the currency period.

UDIA (Qld) Recommendations:

- Amend section 87 of the Planning Bill to make it clear that a person may make an extension application after an approval has lapsed so long as the assessment manager agrees. This should benefit from the allowance in section 87(4) that the assessment manager be empowered to agree even if the development approval was given because of an order of the Court.

- Section 85(1) of the Planning Bill be reworded to reinforce the intent that lodgement of a survey plan or commencement of the first use within the currency period keeps the approval alive. This will require deletion of the words "part of a", replacing "any part of the" with "a" in s85(1)(a) and (b), deleting "part of the" from s85(1)(c) and deleting "part of" from s85(2).

Trunk Infrastructure Conversion applications

Section 138(2) places a one year time limit on when an application can be made to convert infrastructure to trunk infrastructure. While not opposed to this in principle, the Institute believes that the timeframe is inappropriate and suggests that the 12 month time limit apply from the date that an infrastructure charges notice (ICN) is issued, rather than the date an approval takes effect. Whilst an ICN is commonly issued at the same time as an approval, the Planning Bill does allow for an ICN to be issued sometime after an approval (section 118(3)(a)). It is also recommended that it be made compulsory that an ICN bring to the applicant's attention the 12 month time limit for the conversion application.

UDIA (Qld) Recommendation:

- Amend s138(2) to:

  "The application (the conversion application) must be made to the local government, in writing, within 1 year after the Infrastructure charges notice is issued."

Trunk Infrastructure Refunds

During the review of the infrastructure charging framework in 2013 and 2014, the Institute argued for greater certainty around the value and timing of refunds. While some certainty was provided in amendments made to the SPA, resulting in the requirement that an infrastructure changes notice provide details on refunds payable including when the refund will be given, no maximum time limit on the payment of refunds was included.

The availability of refunds and their timing can be the difference between a development being viable or not. Long timeframes before refunds are paid means that 'first mover' developers are in fact bearing a burden greater than the demand the development places on an infrastructure network. This is grossly inequitable for these new home buyers to be carrying the funding costs associated with infrastructure that benefits others. The costs of shared infrastructure should be funded by local government as they can borrow at lower rates than developers and, as mentioned, it is inequitable for new home buyers to carry the funding cost and risk.

The Institute therefore recommends the Planning Bill set a maximum timeframe for when refunds must be paid in the interests of certainty and equity.

UDIA (Qld) Recommendation:

- Amend section 128 to:

  (4) *"the local government must pay the refund under subsection (3)(b) within 2 years from when the infrastructure is provided or five years from the issuing of the development approval, whichever is the lesser."*

Transition Arrangements

The Institute notes that the new Act is proposed to commence 12 months after the Bill is passed by Parliament. While the Institute understands that the Department will undertake significant training during this time, this is an unusually long period of transition and one which will cause uncertainty and delay for the industry and have the potential to negatively impact the Queensland economy. During the twelve month transition phase, development applications may be slowed in prospect of the commencement of the new Act. As no "tweaking" or amendments are likely to be contemplated until after the Act has been in operation for some time, the ability to work with the new Act and understand what areas will need to be refined will be delayed, effectively for in excess of sixteen months from release of the Bill.

The Institute is aware that some local governments are already considering required changes to plans and processes to facilitate an efficient transition to a new planning act and associated development assessment rules. Planning reform in Queensland has been a well-documented and discussed topic since 2013 and the framework proposed in the Bill is clear. Key required changes to planning schemes, or policy to explain how the planning scheme will operate and how applications made under the new Act will be assessed, should be able to be completed within six months to enable the Act to successfully commence. Planning reform is vitally important to the development industry and unreasonable delay would defer the benefits of the new Act and cause negative impact in the interim.

UDIA (Qld) Recommendation:

- The Act take effect 6 months from the date of the Bill being passed by Parliament, unless substantial changes have been made to the Bill. If substantial changes have been made, the proposed period of 12 months should be maintained.

Making and amending planning instruments

While the Institute is supportive of a number of changes reflected in the Planning Bill which provide flexibility and facilitate more efficient and timely amendments to planning instruments, there are further considerations which would ensure greater certainty for the industry. To facilitate greater certainty and reduce risk, the quality of local planning schemes and their timely reflection of Regional Plans and the State Planning Policy is of critical importance. The Institute therefore urges the State Government to play a stronger role in ensuring that local schemes deliver on the intent of planning legislation and on State Interests. If this does not occur, State Government efforts in reforming planning and stimulating positive development and opportunities for all Queenslanders can be undermined at a local level.

In particular, it is vital that State Interest checks be improved to be more thorough than they have been historically, and that a greater willingness to intervene be demonstrated by the State when a State Interest is not being met. For example, it is the Institute's understanding that planning scheme policies and the detail of planning schemes have not always historically been subject to thorough review by the State during the State Interest checking process. This is despite the fact that onerous and inaccurate requirements on matters such as design standards, parking or environmental offsets in a planning scheme policy can have significant detrimental impacts on development and State Interests. Without thorough review, the drafting of prescriptive planning schemes and related policies has the potential to completely undermine the State Government's mandate of a performance based planning system.

Similarly, Regional Plans have simply not provided the support needed to bring forward growth areas and have typically relied on local governments to amend their planning schemes accordingly. This process has been cumbersome, slow, uncoordinated, and ineffective and has generally resulted in areas that have been previously identified by the State Government as suitable for growth taking at least 10 years to resolve the planning process and get houses on the ground. The State Government must ensure mechanisms are in place that enable land to be brought to the market in an efficient and timely manner in response to market demand.

UDIA (Qld) Recommendations:

- Include further requirements in the Planning Bill or supporting instruments that ensure high quality and up to date local planning schemes. Requirements should include that:
  - Following amendments to Regional Plans, local governments amend their local planning schemes within two years to reflect these changes.

  - Entire planning schemes be subjected to a formal 'State Interest Review' every five years (regardless of whether amendments to an SPP have occurred during this period). This will have numerous benefits including:
    - ensuring that schemes are amended in a more timely manner following changes to the SPP;
    - identifying missed issues in the original State Interest Check to be rectified;
    - ensuring that the cumulative effect of minor amendments to planning schemes are able to be assessed to ensure they are not contradictory to State Interests; and
    - providing a service and resource to local government to enable them to deliver more timely reflection of State Interests and deliver continual improvement.

  - That local government be required to produce a bi-annual land availability report. This report should be required to demonstrate that there is available sufficiently zoned land capable of being economically serviced to cover ten years of expected demand. If sufficient supply cannot be demonstrated, planning scheme amendments should be required.