Submission No. 085
11.1.13

PROPERTY COUNCIL of Australia

PROSPERITY | JOBS | STRONG COMMUNITIES

Submission on the Planning Bills

18 January 2016

Contents

1. Introduction

Thank you for the opportunity to provide comment on the six Planning Bills currently before Queensland Parliament's Infrastructure, Planning and Natural Resources Committee.

The Property Council is pleased to note the planning reform agenda in Queensland has received bipartisan support, which will ultimately deliver improved outcomes for all stakeholders.

As the committee members would be aware, the Property Council lodged a submission on the Private Member's Bills on 13 July, 2015. For this reason, the following submission relates only to the Government's Bills, with a primary focus on the *Planning Bill 2015.*

While the Property Council supports the streamlining, clarity and significant reduction in the overall length and complexity delivered through the legislation, this is only part of the reform process. Significant cultural change- both Government and private sector- will be required in order to deliver the full potential of a reformed planning framework.

For this reason, the Property Council would like to see the legislation accompanied by a five year implementation plan for local governments, which would provide them with the finances and resources necessary to ensure a smooth and positive transition to the new framework.

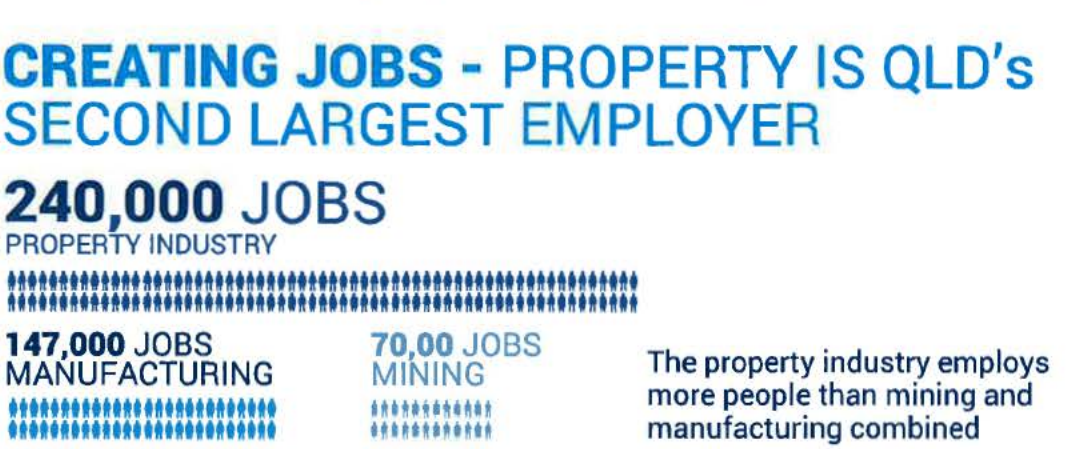
In addition, the introduction of a monitoring and reporting process for local government planning schemes, assessment activities and adoption of legislative requirements- including the infrastructure charges framework- would allow for greater public scrutiny of local government activities, as well as providing a framework for the development of an incentives program to reward innovative and positive local government initiatives.

With the continuation of the reform agenda, the Property Council would also like to see the Government continue the development assessment trigger reduction program that has delivered significant time and cost savings to stakeholders over the past three years.

While this program has delivered great benefits to both the Government and private sector, there are still many more development assessment triggers that could be removed or reduced through revised risk thresholds or the development of standard conditions.

The Property Council notes that much of the revised planning framework is located in the regulations and guidelines that sit outside the legislation. This submission focuses solely on the legislation, with comments on these additional materials to be provided to the Department at a later date.

2. Property industry's contribution to the Queensland economy



3. Planning Bill- Preliminary

Clause 3- Purpose of Act

The purpose should be a succinct statement of what the legislation seeks to achieve.

The current drafting overcomplicates the purpose, which may result in it either not being implemented, or being misconstrued and misapplied.

Clause 4- System for achieving ecological sustainability

The addition of the word 'integrated' in 4(b) is welcomed by the Property Council, as it reinforces the need for the Government to consider competing State interests leading to an integrated, holistic approach to regional planning.

The Property Council is pleased to note the reference to SARA in clause 4(f). Since their introduction, the State Assessment and Referral Agency (SARA) and the single State Planning Policy (SPP) have significantly improved timeframes and consistency in planning and development assessment in Queensland.

Clause 5- Advancing purpose of Act

As noted in previous Property Council submissions to the Department, the reintroduction of the precautionary principle is not supported as it works against the social, environmental and economic balance that clause 3(2) aims to facilitate, by assuming that all development has a negative impact on the environment, unless proven otherwise.

The Property Council is however, pleased to note that while the purpose of the legislation is to facilitate ecologically sustainable development, the Bill also acknowledges the importance of balancing environmental protection with economic growth and the social benefits of development.

Of particular note is the introduction of clauses 5(f) and 5(g), which reinforce the importance of investment and housing choice and affordability in achieving the aim of the legislation.

4. Planning Bill- Planning

Clause 8- What are planning instruments

The Property Council supports the reduced number of State planning instruments, which will assist in streamlining the planning framework, whilst also providing greater certainty for stakeholders.

Clause 9- When planning instruments and designations have effect

The Property Council has previously provided comment on the retrospective commencement of TLPIs.

These earlier concerns remain, as under clause 9(4) of the Bill, a TLPI may take effect on the day a local government resolves to give the TLPI to the Minister for approval.

Unless all stakeholders monitor every local government meeting for relevant resolutions, there is a risk that a person may undertake an activity that was legal at the time the activity was undertaken, but subsequently becomes unlawful because the Minister has approved the retrospective operation of a TLPI. In undertaking the activity, the person would have unknowingly committed a development offence (for which the maximum penalties will be substantially increased by the Bill).

Clause 12- Making temporary State planning policies

As a result of the streamlined provisions for the making of State planning policies, the Property Council does not support the proposed extension of the effect of temporary State planning policies from 1 year to 2 years.

Clause 16- Contents of local planning instruments

It is noted that clause 16(1)(c) requires planning schemes to 'coordinate and integrate' the matters dealt with by the scheme, including any State and regional aspects of those matters. This clause should be expanded to require local governments to also 'reconcile' matters dealt with by their planning schemes.

The Property Council supports the retention of required contents (regulated requirements) (clause 16(2)) for planning schemes, and is pleased to note that they will be less prescriptive than the existing Queensland Planning Provisions, which at times constrain local governments from taking an innovative approach to plan-making.

Clause 18- Making or amending planning schemes

The Property Council welcomes the increased timeframes for the public notification of planning schemes, as this positive move will ensure there is more public consultation up front in the planning process.

The introduction of a communications strategy (clause 18(5)(d)) to accompany the public notification of planning schemes will also assist in educating stakeholders regarding the

planning process and ensure issues of concern to the community are able to be addressed early in the process.

To ensure these communications strategies have their desired effect, the Property Council would like to see State Government oversight of their development and implementation. As part of this, the Property Council would like to see the introduction of a legislative requirement for local governments to immediately inform landowners when their property rights have been, or are proposed to be, affected by an adverse planning change.

Clause 23- Making or amending TLPIs

As noted above with respect to temporary State planning policies (clause 12), the streamlined process for making and amending planning instruments should mean that the existing 1 year timeframe is adequate for local governments to transition their TLPIs into their planning schemes. For this reason, the Property Council does not support the proposed extension to 2 years.

Clause 25- Reviewing planning schemes

The Property Council supports the return of a timeframe within which a local government planning scheme must be reviewed. The review provisions are, however, meaningless unless there are consequences for non-compliance, and we ask the State Government to implement a program of monitoring, assistance and, if necessary, to take action, to ensure that the review timeframes are met.

Clause 26- Power of Minister to direct action to be taken

The Property Council supports the retention of provisions that allow the Minister to direct local governments to take action to comply with their obligations under the legislation. While most local governments will comply with their obligations, the retention of this power will enable the Minister to take action in those limited situations when it is required.

Clause 29- Request to apply superseded planning scheme

The Property Council is pleased to note the retention of the superseded planning scheme provisions, which will continue to provide a limited opportunity for landowners to implement their pre-existing rights after an adverse planning change takes effect.

Under clause 29(10)(b), if a local government decides to agree, or is taken to have agreed, to a request to apply a superseded planning scheme, it is still unclear whether or not this right is personal to the person who made the request, or whether the right runs with the land. This matter requires clarification.

Clause 30-Compensation

The Property Council does not support the drafting of clause 30, and in particular 30(5), as there is not enough detail regarding what is required in the Minister's rules to ensure a consistent and objective determination of the materiality of the risk and severity of the harm.

This clause should be expanded to ensure the Minister's rules include a requirement for local governments to commission and consider a risk assessment report that:

(i) Is prepared in good faith by an appropriately qualified, independent person, having regard to the best available information; and
(ii) Assesses feasible alternatives for reducing the risk, including the imposition of conditions on development approvals; and
(iii) Is publicly notified with the planning scheme change.

These risk assessment reports should also be made available for inspection and purchase.

Clause 32- Deciding a compensation claim

The timeframes for the two different processes identified in clause 32 are potentially lengthy and provide little certainty to those seeking a compensation claim.

The first option, to give a notice of intention to resume the affected owner's interest in the premises, could see a local government issue a notice, and then decide not to pursue the resumption, or allow the notice to lapse. This could take up to one year. After this time, the local government may decide to approve all or part of a claim (within 20 days after the lapsing or withdrawal), and then pay compensation within 30 days after the appeal (or appeal period) ends. This is potentially a very long process that provides little certainty to affected owners.

The second option, whereby a local government may 'decide' to amend the planning scheme, similarly provides little certainty to affected owners. As the requirement is for the local government to *decide* to amend the planning scheme, there is no imperative for this amendment to be undertaken within a reasonable timeframe.

Clause 41- Repealing designation- owner's request

This clause provides inadequate protection for a landowner for whom a designation is causing hardship.

The section is inadequate due to the exemptions contained in clause 41(2) and the uncertainty of the outcome referred to in clause 41(4)(c) which states that the designator may decide to take "other action that the designator considers appropriate in the circumstances". In addition, there are no appeal rights for affected owners.

5. Planning Bill- Development Assessment

Clause 44- Categories of development

The simplification of the categories of development (to prohibited, accepted and assessable), will provide stakeholders with a clearer understanding of the categories of development in Queensland than under the current provisions in the SPA.

Clause 46- Exemption certificates

The Property Council supports the introduction of exemption certificates as a welcome addition to the assessment framework and as a means of fast tracking development, particularly where it has been categorised incorrectly.

While Schedule 33 of the draft Regulations provides that copies of all exemption certificates are provided as part of a standard planning and development certificate, as exemption certificates expire after 2 years, it is important that this requirement is expanded to include all exemption certificates, whether or not they are in effect at the time of the search. Without this information being available it will be difficult for a third party (e.g. during a due diligence process) to verify the lawfulness of use or works undertaken under an exemption certificate that is no longer current.

Clause 48- Who is the assessment manager

The Property Council welcomes the introduction of the option for applications to be assessed by third party assessment managers (chosen assessment managers), where permitted by local governments or the chief executive.

The provisions, as currently drafted, need some further attention to provide for:

- how conflicts of interest will be dealt with;

- the handover of all documents to the prescribed assessment manager- not just a copy of the application and decision notice;

- what happens in extenuating circumstances if the chosen assessment manager is no longer able to undertake the assessment e.g. through death, illness or for other reasons.

Clause 49- What is a development approval

The Property Council provides in-principle support for clause 49(4), which provides for a preliminary approval to override later development permits for the development, to the extent of any inconsistency, unless by written agreement. The Property Council, however, holds some concerns about the practical application of this provision.

First, the provision should only apply to preliminary approvals and later development permits that are issued as a result of an application made after the new legislation commences. To apply this provision to applications made and approvals granted under prior legislation would have serious unintended consequences.

Second, there needs to be a readily accessible record of the matters identified in clauses 49(4)(a) and (b) so that third parties are able to determine whether the presumption in clause 49(4) applies or has been superseded by a written agreement. One way of doing this may be for this information to be recorded on the decision notice.

Clause 51- Making development applications

The Property Council supports clause 51(4)(c), which allows assessment managers the discretion to determine when an application is considered to be properly made.

We do not, however, support the requirement for owner's consent to be provided prior to an application being accepted as being properly made. It should be possible for an applicant to provide the owner's consent at any time before an application is decided. After all, it is the applicant who takes the risk if it is unable to obtain the owner's consent.

Clause 53- Publicly notifying certain development applications

The Property Council supports the ability of an assessment manager to excuse minor non-compliances with the public notification requirements as a pragmatic approach to a low risk situation (clause 53(3)).

Clause 53(4) sets out two timeframes for the public notification of development applications. It is unclear why two separate timeframes are required, and it is the Property Council's position that nominating a single timeframe for the notification of development applications would assist in further simplifying the legislation.

Clause 56- Referral agency's response

The Property Council does not support the ability for referral agencies to mandate a currency period for a development approval. This should be a matter solely for an assessment manager based on a range of factors, including advice provided by referral agencies. The ability for referral agencies to mandate a currency period is at odds with clause 87, which allow assessment managers to extend currency periods without reference to referral agencies.

Clause 57- Response before application

The Property Council welcomes the opportunity for applicants to receive pre-lodgement referral agency responses. This will facilitate a faster process for applicants, as well as providing them with the certainty that if their proposal does not change, the early referral response will continue to apply.

Clause 58- Effect of no response

Clause 58 is also supported by the Property Council as it provides certainty to an applicant and allows the applicant to proceed without the risk of having to deal with an additional or late referral agency response that was not provided in the first instance.

Clause 60- Deciding development applications

The Property Council supports the presumption in favour of approval, which is returned through clause 60(2) of the Bill. This presumption is essential for the efficient operation of the planning system, and to ensure that the new framework is able to achieve its desired outcomes.

There is, however, a concern that some local governments, faced with a presumption in favour of approval and the continuation of deemed approvals, will raise the level of assessment of development within their planning schemes.

There is an important role for the State Government to play in providing leadership to local governments, and ensuring that the funding secured for planning reform is directed towards the transition process. In particular, it will be important to ensure that development assessment benchmarks are drafted in a functional, useable manner, allowing the overall framework to deliver on its desired outcomes.

The Property Council urges the State Government to continue its leadership role in providing opportunities for local governments to undertake cultural change, but also to step up and intervene in situations where change is not taking place. The introduction of a monitoring and reporting system for local government development assessment activities would provide for greater public scrutiny as well as establishing a foundation for the State Government to introduce an incentive-based system for local government performance.

In addition, as the new decision rules relating to impact assessment call up the entire planning scheme, it will be imperative that the strategic framework of local government planning schemes is also transitioned to take advantage of the new framework.

The new decision rules and legislation will provide a framework for action, however, the success of planning reform will ultimately rely on local governments making change both culturally and through their planning schemes.

Should local governments choose not to embrace reform it will ultimately be the property industry that is affected. This will then have flow-on implications for State and local government revenue, jobs and housing affordability in Queensland.

Clause 63- Notice of decision

The Property Council supports the introduction of a requirement for the assessment manager to include the reasons for their decision in the notice published about the decision on their website, noting that many local governments already do this.

Given the operation of a performance-based planning system, there is often confusion regarding the reasons why assessment managers make certain decisions. Providing a publicly available statement of reasons may assist stakeholders in understanding the

matters taken into consideration when making decisions, along with how a development has/has not met performance-based benchmarks.

When developing the approved form for the notice, it will be important to weigh the additional time it may take some assessment managers to provide this additional information against the benefits it provides other stakeholders, particularly in situations relating to simple code assessable applications.

Clause 64- Deemed approval of applications

The retention of this provision will reinforce the positive cultural change the legislation aims to facilitate. Although the deemed approval process is only used on limited occasions, it has the positive effect of ensuring that assessment managers meet mandated development assessment timeframes.

Clause 65- Permitted development conditions

Clause 65(1) retains what is referred to under the SPA as the 'reasonable and relevant' conditions test. The Property Council supports the retention of this provision, however, would like to see SPA's existing clause 345(2) replicated in the Bill. That is, the 'reasonable and relevant 'conditions test should apply despite the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, an assessment manager or a referral agency.'

Clause 66- Prohibited development conditions

Clause 66(2) allows a condition of a later development approval to be inconsistent with a condition of an earlier development approval where certain requirements are met. The Property Council supports this provision, however, there needs to be a readily accessible record of the requirements having been met. One way of doing this may be for this information to be recorded on the decision notice for the later development approval.

Clause 71- When development approval has effect

Clause 71 does not recognise the common occurrence where applicants waive their appeal rights. The clause should be amended to acknowledge this situation.

Clause 73- Attachment to the premises

Clause 73(1)(a) states that a development approval 'attaches to the premises'. Under the SPA, a development approval attaches to 'the land'. While the definition of premises includes land, it also includes 'a building or other structure'.

Given the prevalence of new building forms such as relocatable home parks, shipping container retail precincts and demountable work camps, this change from 'land' to 'premises' may have significant unintended consequences.

Clause 82- Assessing and deciding application for other changes

The Property Council supports the introduction of a simplified process for making changes to a development approval, other than for a minor change. This new process will allow an applicant to proceed through the change process, rather than having to lodge a new application or being unnecessarily subject to further public notification requirements.

Clause 85- Lapsing of approval at end of currency period

The re-introduction of standard currency periods for a material change of use (6 years), reconfiguration of a lot (4 years) and any other part of a development approval (2 years) provides consistency, and removes the confusion associated with the SPA's complicated roll forward provisions.

Clause 89- Particular approvals to be noted

The Property Council welcomes the introduction of the requirement for local governments to note development approvals that are substantially inconsistent with the planning scheme. It is important that variation approvals also continue to be noted on planning schemes.

At present, many local governments do not comply with the existing requirement in the SPA to note variation approvals on their planning schemes. The Property Council would like to see these provisions enforced, as members of the community make decisions based on the development they expect to occur in their immediate surrounds.

The requirement for substantially inconsistent approvals and variation approvals to be noted on a planning scheme is particularly important for persons who move into an area following the granting of such an approval, not having had an opportunity to provide input during the development assessment process.

Clause 95- Directions to decision makers- current applications

The process outlined in clause 95(4)(b)(ii) does not appear to work. The balance of the process is unlikely to 'restart' if the Minister calls in the application or gives another direction.

Division 3- Minister's call in

The Property Council supports the retention of Ministerial call in powers, however, we take the opportunity to reinforce that these powers should only be used as a last resort to achieve a policy or planning outcome, or to resolve an impasse between stakeholders during the development assessment process.

Greater oversight of local governments during the development of planning schemes would assist in ensuring State interests and policy priorities are adequately reflected in planning schemes, thereby reducing the need for Ministerial intervention at later stages in the development process.

6. Planning Bill- Infrastructure

Chapter 4- Infrastructure

As noted in previous submissions, it is the Property Council's position that the amendments to Queensland's infrastructure charges framework that were introduced in 2014 have not yet had the opportunity to be fully implemented by local governments.

For this reason, it is considered premature to make any significant changes to this chapter of the legislation. A full and thorough review should be undertaken separately to determine the value of the amendments, and to allow stakeholders the certainty to proceed with the implementation of the current arrangements.

In noting this, given the introduction of 'chosen assessment managers', further consideration may need to be given to how Part 2 will operate if a chosen assessment manager, rather than a local government, assesses an application.

Clause 120- Requirements for infrastructure charges notice

The Property Council supports the addition of clause 120(2), which provides discretion to the applicant to waive the inclusion of information regarding an offset or refund on their infrastructure charges notice.

7. Planning Bill- Transitional Provisions

Clause 288- References to the old Act or provisions of the old Act

This clause provides that self-assessable development under the 'old Act' becomes, "to the extent the development does not comply with all applicable codes for the self-assessable development- assessable development".

What this clause does not state is whether it becomes code assessable development, or impact assessable development. It is the Property Council's preference that such development should be deemed code assessable where no provision is made in a planning scheme.

8. Planning and Environment Court Bill

The Property Council supports the ability of third parties to appeal a development application where legitimate planning issues have been raised. It is, however, imperative that the unfettered discretion of the Court to award costs in these appeal proceedings is retained.

The Property Council is disappointed that the *Planning and Environment Court Bill 2015* removes the discretion of the Court to determine the most appropriate allocation of costs for appeal proceedings on a case-by-case basis.

Removing the discretion of the Court to award costs and re-introducing pre-determined criteria for how costs are - or are not - awarded risks the making of unmeritorious appeals, where a party can bring forward an appeal with no risk of incurring costs themselves, but may be able to inflict significant time and cost delays on another party.

The Court's discretion to order that a party pay another party's costs must be reinstated to ensure fairness and a level playing field for those utilising the Court system.

9. Planning (Consequential) and Other Legislation Amendment Bill

Of significant concern to the property industry is the consequential amendments proposed to the *Coastal Protection and Management Act 1995* (CPMA), which would see the Department of Environment and Heritage Protection (DEHP) take responsibility for issuing land surrender conditions for coastal management purposes.

One of the greatest benefits of the planning reform agenda has been the further integration of Queensland's planning framework, allowing for the consideration of planning and development assessment matters in a holistic manner.

SARA was established with the primary purpose of administering the State's interests in planning and development assessment, notably through the SPP and SDAP, which were developed in consultation with all other Government departments.

Allowing other departments to take responsibility for individual elements of the assessment process erodes SARA's primacy and leads to a duplication in Government resources.

Land surrender for coastal management purposes is a consideration that necessarily must take place through the integrated development assessment process, rather than as a standalone assessment.

SARA is currently delegated responsibility for administering the land surrender powers of other agencies, such as Transport and Main Roads; a power it administers through the development assessment process. Logically, SARA should also retain responsibility for administering DEHP's land surrender powers.

Importantly, the land surrender provisions within the CPMA breach fundamental legislative principles, as they do not provide for the right of appeal or compensation for affected landowners.

Amendments that allow for the owner to make submissions in response to a land surrender notice do not provide adequate protections and impinge on property rights.

Alternatives to land surrender, such as covenants and development conditions, may provide opportunities to deliver better environmental and community outcomes on affected lands, while limiting the Government's own exposure to ownership of highly constrained land.

Consideration of land surrender outside of SARA raises the additional concern that other options for the use of affected lands, or even opportunities to compensate through additional development yield on unaffected parcels of land, may not be taken into consideration.

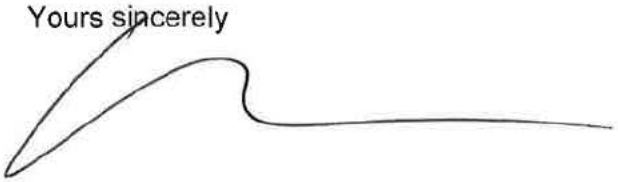
Given the Government's commitment to delivering a simplified, streamlined planning framework, it is logical that the land surrender powers under the CPMA are delegated to SARA to administer as part of the integrated planning framework.

10. Conclusion

The Property Council would like to again thank the Government for the opportunity to provide feedback on the Planning Bills.

If you have any further questions about the Property Council or the detail included in this submission, please contact Chris Mountford on 07 3225 3000, or cmountford@propertycouncil.com.au.

Yours sincerely



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PROPERTY COUNCIL of Australia

PROSPERITY | JOBS | STRONG COMMUNITIES

Submission on

Planning and Development (Planning for Prosperity) Bill 2015

Planning and Development (Planning Court) Bill 2015

13 July 2015

Contents

1. Executive Summary

Thank you for the opportunity to provide feedback on the Private Member's Bills- *Planning for Development (Planning for Prosperity) Bill 2015* (Planning Bill) and *Planning for Development (Planning Court) Bill 2015* (Planning Court Bill).

As you would be aware, the Property Council has been involved in consultation on the development of the Planning Bill since 2013.

We actively participated in the workshops undertaken by the former Government, and have provided numerous submissions to inform the drafting of the legislation.

We are pleased to see bipartisan support for planning reform in Queensland, as it is only through a better planning system that we will be able to increase land supply, reduce the cost of housing and provide certainty for the community and development industry alike.

With both major political parties supporting the aim of developing Australia's best land use planning and development assessment system for Queensland there are now two planning reform processes underway, both aiming to deliver similar outcomes.

Considerable resources are required to participate in consultation sessions and to draft formal submissions, so it would be preferable for stakeholders if both planning processes converged, allowing all resources to be focused on developing a single pathway for reform in Queensland. This would also give certainty and a clear direction for reform, which would increase confidence to invest in Queensland.

Regarding the Planning Bill, the Property Council supports the work undertaken to streamline and simplify the legislation, and in doing so significantly decreasing its overall length.

The Planning Bill is an easily navigable piece of legislation, with subtle changes in language from its predecessor- the *Sustainable Planning Act 2009* (SPA)- that will facilitate cultural change, and in doing so support better development outcomes.

The reduced scope of the Planning Bill consequently means that much of the detail of Queensland's new planning system will sit in guidelines and regulations outside of the legislation.

As a result of this, it is difficult for the Property Council to provide comprehensive feedback on the expected operation of the Planning Bill without access to these extra materials.

The following feedback has been provided to assist the Infrastructure, Planning and Natural Resources Committee to understand the property industry's position on both the Planning Bill and the Planning Court Bill.

2. Summary of key recommendations

Provisions carried over from the *Sustainable Planning Act 2009* that are important to retain:

1. Ministerial power to direct local governments to comply with their obligations under the legislation.
2. Superseded planning scheme and compensation provisions for local governments.
3. SARA and the development assessment trigger reduction program.
4. Deemed approvals.
5. Ministerial call-in powers.
6. Queensland's infrastructure charging framework.
7. Discretion of the P&E Court in the awarding of costs in appeal proceedings.

Provisions removed from the *Sustainable Planning Act 2009* that should be reintroduced:

8. Legislative support for the role of regional plans in identifying regional outcomes and resolving matters of State interest.
9. Requirement for regular reviews and amendment of local government planning schemes.
10. Hardship provisions for owners adversely affected by designations.
11. Assessment manager's discretion to determine when an application is considered to be 'properly made'.

New additions to the legislation that should be retained:

12. Acknowledgement of the economic and social benefits of development through the Purpose of the Act.
13. Introduction of a focus on 'facilitation' of development- rather than the 'precautionary principle'- to promote cultural change.
14. A revised hierarchy of State planning instruments.
15. Introduction of exemption certificates.

16. Introduction of a process to change applications other than for a minor change.
17. Assessment manager's discretion to excuse noncompliance with notification requirements.
18. Simplified currency periods for development approvals.
19. Introduction of third party assessment of applications.

Other recommendations for consideration:

20. Ensure the transition to new legislation is not unnecessarily stalled through the development of common-format local government planning schemes.
21. Introduce a greater focus on community consultation in the early stages of local government plan-making, including notification of owners likely to be affected by revised natural hazard mapping.
22. Changing the categories of assessment for assessable development from 'code' and 'impact' to 'standard' and 'merit' (while acknowledging the positive impact on culture) may unnecessarily delay the local government planning scheme transition process.
23. Ensure local governments retain responsibility in subsequent stages of the application process for decisions made by third party assessment managers.
24. Ensure adequate resources are directed towards monitoring and reporting on local government implementation of the infrastructure charges framework.
25. Introduce owner's consent to be required before an application is decided, rather than at lodgement.
26. Revise transitional provisions to ensure they will facilitate a smooth transition to the new legislation.

3. Property industry's contribution to the Queensland economy

The property industry in Queensland creates the homes we live in, the offices in which we work, and the shopping centres and recreational areas where we spend our leisure time.

It has a larger footprint on the Queensland economy than any other industry[1].

3.1 Contribution to Gross State Product (GSP)

The property industry directly contributed $33.8 billion to GSP in Queensland in 2013-14, representing 11.4 per cent of total GSP.

It is estimated to have contributed a further $49.9 billion to Queensland GSP through flow-on demand for goods and services.

3.2 Contribution to employment

The property industry directly employed 239,772 full time equivalent (FTE) employees in Queensland in 2013-14, representing 12.1 per cent of the state's workforce.

The industry also supported some 292,684 additional FTE jobs through flow-on activity.

Approximately 27.4 per cent of wages and salaries paid to Australian workers are generated by the property industry.

3.3 Contribution to government revenues

The property sector in Queensland contributed approximately $9.9 billion in combined State Government tax revenues and local government rates, fees and charges revenue in 2013-14. This equates to 49.8 per cent of total State taxes and local government rates, fees and charges revenues in 2013-14.

[1] All the statistics in this section are sourced from AEC group, 2015

4. Preliminary

Purpose of the Act

The Property Council supports the Planning Bill's purpose as drafted, as it provides a clear overview of the legislation's intention to facilitate development and focus on the triple bottom line benefits it can bring to a community.

The *Sustainable Planning Act 2009* (SPA) focuses solely on the importance of 'ecological sustainability' in development, and fails to recognise the broader economic and community benefits that development can deliver. It also focuses on 'managing' the process and effects of development, rather than the more positive language in the Planning Bill's purpose, which aims to 'facilitate' development.

The Property Council also supports the removal of the 'precautionary principle' from the purpose of the Act. The precautionary principle assumes that all proposed development will have a negative impact on the environment, unless proven otherwise.

The removal of this principle will have a positive impact on the culture within planning and development assessment, as it will allow proposals to be considered for their benefits, rather than managed against perceived negative impacts.

5. Planning

State planning instruments

The Property Council supports the removal of State Planning Regulatory Provisions (SPRPs) from the planning framework, as this will not only simplify the hierarchy of instruments, it will also provide greater certainty to stakeholders.

As SPRPs can currently be introduced at any time and cover any region or State interest, they introduce a level of uncertainty into the planning system.

SPRPs currently sit at the top of the hierarchy of State planning instruments, meaning they must be taken into consideration in all planning and development assessment matters.

With the State Planning Policy (SPP) covering **all** matters of State interest, there is little need for the retention of SPRPs.

Those SPRPs with regionally specific outcomes, such as the South East Queensland Koala Conservation SPRP, can be transitioned into the Regulation, rather than being retained as standalone instruments.

The removal of SPRPs will also allow the SPP to rise to the top of the hierarchy of planning instruments to reinforce its importance in the planning framework.

Further emphasis does, however, need to be placed in legislation on the role of regional plans as statutory instruments that are intended to resolve State interests at a regional level, and are required to be reflected in local government planning instruments.

The definition of regional plans in Chapter 1 of the Planning Bill notes they set out 'planning and development assessment policies about matters of State interest', however there is no recognition of their role in resolving conflict.

As further noted below, there is little done to ensure local governments adequately reflect State planning instruments and policies in their local planning schemes. The time taken for regional plans to be reflected in planning schemes has caused Property Council members significant concern in the past.

Local planning instruments

The Property Council supports consistency across local government planning schemes as a way to simplify the planning system and ensure common implementation of State requirements.

In noting this, it is imperative that the development of new common scheme requirements (presumably a modified version of the Queensland Planning Provisions) does not hold up the process of transitioning to the new legislation.

Likewise, it is imperative that mandatory consistency of key components of schemes does not stifle local government innovation in developing new and better ways to implement planning processes.

As under SPA, clause 15 of the Planning Bill proposes that the Minister will be responsible for developing rules and guidelines for making and amending local planning

instruments. As part of the revised guidelines, the Property Council would like to see a greater focus on the requirements for community consultation at the early stages of the plan-making process, rather than waiting until the public consultation or development assessment notification period.

This would ensure greater community buy-in and understanding of where development is expected to occur at a time when they are best able to influence outcomes.

Similarly, the Property Council would like to see a greater emphasis placed on informing owners of potential impacts on their property rights as a result of a new or amended planning scheme e.g. potential downzoning to reflect newly obtained flood mapping.

Recent experience has shown that not enough emphasis has been placed on creating community awareness of the potential impacts of planning schemes on property rights.

The SPA includes a requirement for local governments to develop new schemes every ten years. While this requirement is never enforced, its presence serves as a reminder to local governments that there is an expectation that planning schemes need to be continually reviewed and updated.

The Property Council would like to see a timeframe for review reinstated, and suggests seven years as an appropriate time.

State powers for local planning instruments

As noted, Ministerial provisions to direct local governments to ensure they comply with their obligations under the legislation are very rarely enforced. The Property Council would like to see greater usage of the provisions currently in clause 21 of the Planning Bill to ensure that planning schemes remain relevant and accurate.

Superseded planning provisions

When the SPA was introduced, it reduced the timeframe available for people to lodge a superseded planning scheme application from two years to one year.

The superseded planning provisions are often used by proponents who are negatively impacted by a change to a planning scheme.

Chapter 2, Part 4 of the Planning Bill contains provisions about making applications under superseded planning schemes, and it is imperative that these provisions continue to provide proponents with at least 12 months to lodge a superseded planning scheme application.

Compensation

Legislative provisions relating to compensation are essential to ensure the protection of the property rights of all Queenslanders. We are pleased to see the inclusion of compensation provisions in Chapter 9, part 3 of the Planning Bill.

Section 706 of the SPA (relating to injurious affection) is well understood by all stakeholders, and provides a balance between allowing local governments to rezone land where there is a significant risk as a result of a natural hazard, and protecting the property rights of the owners of the land.

Through the retention of a similar provision, currently under clause 24 of the Planning Bill, a positive culture is facilitated whereby local governments are required to engage with land owners to determine if there is an appropriate use for the land that can be achieved through development conditions, or for example, through allowing greater density on part of the site, but no development on another part.

In situations where a land parcel is so severely impacted that there are no appropriate uses, the local government is able to downzone the land parcel while being protected under the legislation from compensation claims.

If this section of the legislation were to be removed, it would allow for the blanket rezoning of land with no right to compensation, even in areas where great development outcomes could have been achieved through the imposition of development conditions by the local government.

Its removal would in effect undermine the property rights of thousands of Queenslanders whose properties are potentially affected by natural hazards.

The Property Council therefore supports clause 24 of the Planning Bill.

Designation

The Property Council supports the proposed changes to provisions for the designation of premises for development of infrastructure, as they will assist in facilitating the delivery of private infrastructure development (Chapter 2, Part 5 of the Planning Bill).

The provisions, however, do not expressly provide for rights for an owner of an interest in designated land who is experiencing hardship as a result of a designation. Designation may have serious financial consequences for an owner, particularly where the land is security for a loan or other financial arrangement.

The Property Council would like to see an equivalent Section 222 of the SPA inserted into the Planning Bill to ensure the protection of land owners.

6. Development Assessment

Types of development and assessment

Without access to the decision rules and assessment benchmarks upon which Chapter 3 of the Planning Bill is based, it is difficult to determine how the proposed changes will operate.

It will be important for the regulation to clearly provide for which types of development are permitted by local governments to be considered as prohibited or assessable, as this will further assist in lowering levels of assessment and driving consistency across local government planning requirements.

The simplification of the categories of development to prohibited, assessable and accepted under clause 39 of the Planning Bill provides for a clearer understanding of the types of development in Queensland, than the categories currently utilised in the SPA.

The Property Council is concerned, however, that the proposed change to the categories of assessment for assessable development under clause 40 of the Planning Bill- namely standard and merit assessment- will delay local governments' transition of their planning schemes to the new legislation.

Retaining the existing terminology of 'code' and 'impact' may facilitate an easier and quicker transition process for local governments, as it will allow there to be a greater focus on the decision rules and assessment benchmarks that enable change, rather than on the names themselves.

In noting this, the Property Council considers the term 'merit' to be a more accurate and appropriate reflection of the assessment required of applications than 'impact', i.e. they are being considered on their merits, rather than the current negative connotations implied by an application being assessed to determine its impacts.

The Property Council supports the introduction of exemption certificates under clause 41 of the Planning Bill as a mechanism to allow minor or inconsequential development outcomes to be achieved without the lodgement of a development application.

It will be important that copies of exemption certificates are provided on request as part of a standard or full planning and development certificate, particularly during due diligence.

Development applications

The possibility of third party assessment provided for by clause 43 of the Planning Bill is supported by the Property Council, and builds on the current successful 'RiskSmart' process utilised by a number of local governments.

It will be important to ensure that where any assessment is undertaken by a third party, the local government remains responsible for decisions and record management, and ultimately ensures it is involved with any further stage of the process, such as appeals, extension applications, declarations etc.

Minor changes to the public notification requirements for development applications as proposed in the Planning Bill will ensure that assessment managers are provided with

the discretion to make sure developments are not unnecessarily held up by minor matters of noncompliance.

The requirements in clause 48 of the Planning Bill that any noncompliance must not have 'adversely affected the public's awareness' or 'restricted the public's opportunity to make properly made submissions', provide a safeguard for the community that their rights will not be diminished through the introduction of this provision.

This provision will ensure that there is an avenue by which assessment managers can excuse insignificant issues which have previously required applicants to undertake public notification for a second time, such as incorrect font size on notification signs.

Assessing and deciding development applications

In lodging development applications with local governments, it is important that like in the public notification stage, assessment managers have the discretion to excuse minor matters of noncompliance, such as an inconsequential error on the application form.

This allows applications to begin the assessment process and resolve minor matters in due course, rather than being unduly delayed at the application stage.

The Property Council is disappointed to note the requirement under clause 46 of the Planning Bill for owner's consent to be provided when lodging an application, rather than the previously flagged change, whereby consent would be required prior to the public notification process, or to the assessment manager making a decision on an application.

Under the previous proposal, projects being held up by negotiations with landowners could begin to be assessed by the assessment manager, with a requirement that the owner's consent is provided at a later stage in the process.

As no decision could be given without owner's consent, and as a development permit attaches to the premises and does not confer any proprietary rights, the risk of not gaining a decision would remain with the applicant.

Development assessment is a costly process, and it would be highly unlikely that an applicant would pay the fees to lodge an application for a site where they were not in negotiations to purchase the site, or expecting to gain the owner's consent in the near future.

While the role of the State Assessment and Referral Agency (SARA) is determined by the Regulation rather than the Planning Bill, the Property Council takes this opportunity to reinforce its support for the retention of SARA as the single point of assessment for development applications referred to the State Government.

This initiative has significantly reduced the time and complexity associated with State Government referrals for development applications, and we are keen to ensure it is retained in its current format.

The ongoing development assessment trigger reduction program has also seen significant benefits to all stakeholders, as it allows the Government to focus its resources on bigger, higher risk projects and provide standard requirements for those considered to be lower risk.

The retention of the deemed approval provisions in clause 61 of the Planning Bill is supported by the Property Council. While these provisions are infrequently used, they provide a mechanism to ensure statutory timeframes are met by assessment managers.

The established deemed approval process provides local governments with an opportunity to condition the application that has deemed to be approved, however they have a shortened timeframe in which to do so, otherwise standard conditions will apply.

The Property Council also supports the retention of the 'reasonable and relevant' requirements for the imposition of conditions on a development approval, under clause 62 of the Planning Bill.

Development assessment rules

As noted, without access to the development assessment rules referred to in Chapter 3, Part 5 of the Planning Bill, it is unclear how their operation will impact on the broader planning and development assessment framework.

Development approvals

The introduction of a process to change applications under clause 47 of the Planning Bill, other than for a minor change, is supported by the Property Council.

There is some concern, however, that these provisions will not operate as intended, as it is unclear when a change becomes so significant that it will require a new application, rather than a change application.

The Property Council is pleased to see the streamlining and simplification of provisions relating to currency periods for development approvals under Chapter 3, Part 6, Division 4 of the Planning Bill.

Standardisation of the currency periods and removal of the complicated roll-over provisions will provide greater clarity for both assessment managers and development proponents.

Minister's powers

The Property Council supports the retention of Ministerial call-in powers as part of the Planning Bill, under Chapter 3, Part 7.

However, in order to deliver confidence and certainty for stakeholders, these powers should only be used as a last resort to achieve a policy or planning outcome, or to resolve an impasse between stakeholders during the development assessment process.

The Property Council believes that greater oversight of local government planning schemes at the drafting stage would ensure State interests and policy priorities are adequately reflected in the scheme, and reduce the need for Ministerial intervention at later stages in the development process.

7. Infrastructure

Queensland infrastructure charges framework

The Property Council is an active participant in the stakeholder working group established by the Government to develop the new Queensland infrastructure charges framework, introduced in July 2014.

Extensive consultation was undertaken in the development of amendments to the SPA in order to facilitate the new framework, and these have now been reflected in the Planning Bill. This consultation process is continuing, with a meeting held in June to discuss the implementation of the framework.

As it has only been twelve months since the introduction of the new legislation, and many of its provisions are yet to be embedded in local government frameworks, the Property Council believes it is too soon to undertake further changes to this section of the legislation.

Instead, greater resourcing and attention should be paid to the implementation of the legislation at a local government level, to ensure its provisions are being accurately reflected, and that it is achieving its desired intention of simplifying the infrastructure charging framework.

The Property Council has recently drawn the Government's attention to a number of local government adopted infrastructure charges resolutions which do not accurately reflect legislative requirements. There is currently limited guidance material available to inform local governments, and with no requirement for public consultation or Ministerial sign off, there are limited avenues through which to enforce desirable outcomes.

However, until there has been adequate time for teething issues with the framework to be resolved, it is imperative that all stakeholders are provided with certainty that the legislative requirements relating to infrastructure charging will not change in the short term.

8. Transitional provisions

The ease with which the transitional provisions enable local governments to implement the new legislation will be central to the success of the entire planning framework, as planning schemes are the primary mechanism for the delivery of planning outcomes in Queensland.

Transitional provisions must provide local governments with simple methods by which they can convert their current SPA schemes to take advantage of the new legislation.

Several elements of the proposed transitional provisions in the Planning Bill will require further refinement.

For example clause 249 of this section requires the approval of the Minister for local governments to convert development requiring code assessment under SPA to development requiring merit assessment under the Planning Bill.

The Property Council supports the intention of this clause as it encourages local governments to lower levels of assessment, however in reality, requiring Ministerial approval is not practical and will only serve to slow down the transition process.

Clause 266 of this section relating to development control plans (DCPs) also needs further refinement.

There is a concern that the transitional provisions for DCPs continue to create uncertainty about the future of these Plans, as a result of their interaction with the planning schemes for the local government areas in which they operate. It is critical for the development of communities such as North Lakes, Kawana Waters and Springfield that the integrity of existing development control plans is preserved, to the exclusion of later local government planning schemes.

The Property Council is concerned that the provisions in their current form do not adequately protect residents and developers of important master planned communities under these plans, as they repeat the SPA position that local governments 'may' adopt or apply a DCP, seemingly leaving it open to local governments **not** to do so.

For example, the transitional provisions in SPA and now carried forward in the Planning Bill, allow local governments the discretion to adopt DCPs independently, or in addition to, their planning scheme, although not as part of it.

The ambiguity of these provisions would allow local governments the discretion to implement a different planning strategy for DCP areas, which may in effect vary its provisions such that they are incompatible with the achievement of the objectives of the DCP, such as economic development.

It would be preferable if the transitional provisions provided greater certainty for DCPs, ensuring that the State interests upon which they were originally developed are retained throughout the life of the Plan.

While local governments should retain their important role in development assessment, greater certainty regarding the retention of existing planning provisions would secure the future role of the DCPs as the development strategies for these three areas.

9. P&E Court

Planning and Development (Planning Court) Bill 2015

The Property Council supports the ability of third parties to appeal the approval of a development application where legitimate concerns relating to planning issues have been raised.

It is, however, imperative that the independence of the Court in determining the awarding of costs in these appeal proceedings is retained.

The Planning Court Bill provides that the Court may exercise its discretion when making a costs order in a P&E Court proceeding.

Examples of matters it may have regard to when exercising its discretion include the parties' commercial interests, whether a party commenced in a proceeding without reasonable prospects of success, whether the proceeding involved a matter of public interest, or whether a party has acted unreasonably.

The breadth of the Court's discretion allows it to determine the most appropriate allocation of costs on a case-by-case basis.

Removing the discretion of the Court and establishing pre-determined criteria for how costs are- or are not- to be awarded, would risk opening up the Court system to vexatious litigation where a party can bring forward an appeal with no risk of incurring costs themselves, but may be able to inflict significant time and cost delays on another party.

Retention of the Court's discretion is essential in ensuring fairness and a level playing field for those utilising the Court system.

10. Conclusion

The Property Council would like to again thank the Infrastructure, Planning and Natural Resources Committee for the opportunity to provide a submission on the *Planning and Development (Planning for Prosperity) Bill 2015* and the *Planning and Development (Planning Court) Bill 2015.*

If you have any further questions about the Property Council or the detail included in this submission, please contact Chris Mountford on 07 3225 3000, or cmountford@propertycouncil.com.au.

Yours sincerely

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