Submission No. 089
11.1.13

LGAQ
LOCAL GOVERNMENT ASSOCIATION OF QUEENSLAND

18 January 2016

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

Dear Ms. Pasley

Planning Bill 2015, Planning and Environment Court Bill 2015, and Planning (Consequential) and Other Legislation Amendment Bill 2015

The Local Government Association of Queensland (LGAQ) welcomes the opportunity to provide feedback to the Infrastructure, Planning and Natural Resources Committee on the State Government's three (3) Planning Bills – *Planning Bill 2015*, *Planning and Environment Court Bill 2015*, and *Planning (Consequential) and Other Legislation Amendment Bill 2015*.

The LGAQ commends the State Government's formal acknowledgement that the planning system must be grounded in local communities and recognise and support the central role of local government in land-use planning and decision making. In addition, the State Government has committed to consider funding support for local governments to manage a transition process to new planning legislation. While funding support is positively regarded, it must be highlighted that many local governments have either recently completed or are still finalising local planning instruments in accordance with the requirements of the Sustainable Planning Act 2009 (SPA) and, with the implementation of a new planning framework, will again be required to undertake a transition program. This transition program will inevitably be expensive, time consuming and resource intensive for all seventy-seven (77) local governments in Queensland and will be most significantly felt by rural, remote, and Aboriginal and Torres Strait Islander local governments who have the least capacity to respond.

The LGAQ is grateful for the opportunities to engage with the Department of Infrastructure, Local Government and Planning (DILGP) and in particular with the Deputy Premier, the Honourable Jackie Trad MP, regarding the identified priority local government issues. The LGAQ has invested significant time and resources in providing input to the State Government on the Planning Reform agenda, including submissions on draft legislation, discussion papers and supporting instruments. Notwithstanding, the LGAQ's support for the Bills 2015 is reserved until the State Government has provided detailed responses to the priority issues identified in this LGAQ Submission. Some responses to-date have been superficial and illustrated a lack of understanding and/or willingness to understand the significance of the issues and respond accordingly. Consultation is indeed welcomed, but must be accompanied by a disposition to engage, understand and adequately respond. In summary, the unresolved priority local government issues in the Bills 2015 are the:

- retention of the inequitable infrastructure offset and refund requirements;
- unnecessary process for an applicant to convert non-trunk infrastructure conditions;
- proposed definition of "use" that jeopardises community rights and understanding of planning schemes;
- retention of the Third Party State Interest Review (at councils' own cost) of local government infrastructure plans; unreasonable new requirement for all councils to publish a notice about its decisions for the majority of development applications;
- lack of demonstrable benefit and workability of the new categories of assessment and decision rules; and
- transitional impacts on local planning instruments and supporting business systems to align with new decision rules (particularly for code assessment) and assessment benchmarks.

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The most significant unresolved local government issue in the Bills 2015 is not actually a proposed amendment, but the decision not to repeal the inequitable infrastructure offset and refund provisions introduced by the former State Government as part of the July 2014 *Sustainable Planning, Infrastructure Charges and Other Legislation Amendment Act 2014* (SPICOLAA).

The cumulative impacts of the offsets and refunds framework are already being felt by councils, particularly where large developments with substantial infrastructure require refunds, resulting in limiting councils ability to plan and budget appropriately and posing a genuine risk to councils' financial sustainability. In the absence of the State Government undertaking any genuine monitoring or review of the 2014 reforms, a preliminary analysis by the LGAQ has indicated the SPICOLAA offsets and refunds framework conservatively represents an annual State-wide liability of $90 million to local governments in terms of revenue foregone or refunds required.

Further commentary and recommendations on this issue are outlined in section 1.3.6 of this submission.

The LGAQ has developed this feedback, and provides this submission, based on consultation with our members and particularly the twenty-four (24) Queensland local governments experiencing the highest growth and development pressures.

If you require further information or clarification, please feel free to contact Mr. Luke Hannan, Manager – Advocacy (Planning, Development & Natural Environment), directly at Luke_Hannan@lgaq.asn.au or on (07) 3000 2226.

Yours sincerely

Greg Hoffman PSM
GENERAL MANAGER – ADVOCACY

Encl.

Planning Bills 2015

SUBMISSION

Local Government Association of Queensland Ltd
January 2016

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit, apolitical association, set up solely to serve councils and their individual needs. The LGAQ has been advising, supporting and representing local governments since 1896, allowing them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places that count; supporting councils' drive to innovate and improve service delivery through smart services and sustainable solutions; and delivering councils the means to achieve community, professional and political excellence.

1. Executive Summary

The LGAQ welcomes the introduction of the State Government's three (3) Planning Bills – *Planning Bill 2015*, *Planning and Environment Court Bill 2015*, and *Planning (Consequential) and Other Legislation Amendment Bill 2015* – collectively identified hereafter as the Bills 2015.

The LGAQ commends the State Government's formal acknowledgement that the planning system must be grounded in local communities and recognise and support the central role of local government in land-use planning and decision making. In addition, the State Government has committed to consider funding support for local governments to manage a transition process to new planning legislation. While funding support is positively regarded, it must be highlighted that many local governments have either recently completed or are still finalising local planning instruments in accordance with the requirements of the *Sustainable Planning Act 2009* (SPA) and, with the implementation of a new planning framework, will again be required to undertake a transition program. This transition program will inevitably be expensive, time consuming and resource intensive for all seventy-seven (77) local governments in Queensland and will be most significantly felt by rural, remote, and Aboriginal and Torres Strait Islander local governments who have the least capacity to respond.

The LGAQ is grateful for the opportunities to engage with the Department of Infrastructure, Local Government and Planning (DILGP) and in particular with the Deputy Premier, the Honourable Jackie Trad MP, regarding the identified priority local government issues. The LGAQ has invested significant time and resources in providing input to the State Government on the Planning Reform agenda, including submissions on draft legislation, supporting instruments and through other mediums such as the *Local Government Planning Reform Position Paper* (Position Paper) dated 8 July 2015 (*Attachment A*).

The Position Paper was developed in full consultation with the LGAQ's reference groups and was unanimously endorsed by the LGAQ Policy Executive. The Position Paper provided a definitive position of Queensland local governments on planning reforms and outlines the:

- ongoing reforms supported by local governments;
- priority local government issues; and
- proposed local government reforms.

The Position Paper also highlighted the clear preference of councils to retain the current SPA with appropriate/relevant reforms to address previously identified concerns.

Most importantly, the Position Paper illustrated local governments' long-standing commitment to planning reform. Individually, councils have made significant investments over the last decade toward many successful business improvement projects and initiatives. Councils have invested in, and collaborated on, sector-wide initiatives including: *Regulation Reduction Incentive Fund* (RRIF); *RiskSmart*; *Housing Affordability Fund Target 5 Days* (HAF-T5); and *Development Assessment Partnership Process – Operational Works and Large Subdivisions Project* (DAPR-OWLS). Most recently, the *Concept to Construction – Development Assessment Innovation* (DAI) Project was widely applauded by industry and has already proven successful on the ground, enabling local governments to adopt innovative development assessment systems by leveraging off verified development assessment leading practice in Queensland. These local government led initiatives are ongoing and are largely driven through leadership, capacity building and operational improvements. The genuine concern is that the implementation of these proven initiatives will be stalled (or even undone) by responding to largely unnecessary legislative amendments offering marginal benefits to Queensland.

The development of the planning legislation throughout the last two to three years has been an iterative and progressive process. The most notable legislative improvements in the Bills 2015 include the:

- introduction of automatic indexation of maximum adopted charges;
- removal of proposed de-coupling of public notification requirements;
- maximum penalties, for numerous offences, increased from 1665 penalty units to 4500 penalty units;
- retention of code and impact assessment categories (although compliance assessment has been removed);
- reintroduction (in the draft exposure Bills) of an ability for councils to be able to designate infrastructure;
- potential improvement to compensation provisions for managing risks associated with natural hazards (although untested and associated Minister's rules are still pending); and
- ability for a Temporary Local Planning Instrument (TLPI) to have effect for two years.

The introduction of an automatic indexation of the maximum adopted infrastructure charges is an important inclusion in the Bills 2015. Previously, these values have been left unchanged since their introduction in 2011

(e.g. $28,000 for a detached dwelling). Infrastructure charges have already dropped in value by over 10% in real terms since 2011 due to indexation not being applied, essentially prohibiting the maximum charges from reflecting the increasing building and construction costs of providing infrastructure. The Sunshine Coast Regional Council has conservatively estimated the impact of the State Government's previous decision not to index the maximum adopted infrastructure charges as a cost to council of $1.5 million annually.

Notwithstanding the above, the LGAQ's support for the Bills 2015 is reserved until the State Government has provided detailed responses to the priority issues identified in this LGAQ Submission. Some responses to-date have been superficial and illustrated a lack of understanding and/or willingness to understand the significance of the issues and respond accordingly. Consultation is indeed welcomed, but must be accompanied by a disposition to engage, understand and adequately respond.

The Committee must also recognise this will be Queensland's third planning Act in 20 years which also includes many interim reviews and reforms that have occurred on a regular basis during that time. Currently, many councils have either recently completed or are still finalising planning schemes in accordance with the SPA and will now be required to transition to a new framework without a period of regulatory stability or an impartial State-wide review of completed schemes. The genuine concern of 'change fatigue' is not just a concern of councils, but the communities they represent, with any transition inevitably being expensive, time consuming and resource intensive. The costs and benefits of the reforms proposed in the Bills 2015 should be thoroughly assessed and not simply pursued on the basis of change for change sake.

In summary, the unresolved priority local government issues in the Bills 2015 are the:

- retention of the inequitable infrastructure offset and refund requirements;
- unnecessary process for an applicant to convert non-trunk infrastructure conditions;
- proposed definition of "use" that jeopardises community rights and understanding of planning schemes;
- retention of the Third Party State Interest Review (at councils' own cost) of local government infrastructure plans;
- unreasonable new requirement for all councils to publish a notice about its decisions for the majority of development applications;
- lack of demonstrable benefit and workability of the new categories of assessment and decision rules;
- transitional impacts on local planning instruments and supporting business systems to align with new decision rules (particularly for code assessment) and assessment benchmarks.

The most significant unresolved local government issue in the Bills 2015 is not actually a proposed amendment, but the decision <u>not</u> to repeal the inequitable infrastructure offset and refund provisions introduced by the former State Government as part of the July 2014 *Sustainable Planning, Infrastructure Charges and Other Legislation Amendment Act 2014* (SPICOLAA).

Further <u>inaction</u> on amending these inequitable provisions is unacceptable to local government.

The cumulative impacts of the offsets and refunds framework are already being felt by councils, particularly where large developments with substantial infrastructure require refunds, resulting in limiting councils ability to plan and budget appropriately and posing a genuine risk to councils' financial sustainability. In the absence of the State Government undertaking any genuine monitoring or review of the 2014 reforms, a preliminary analysis by the LGAQ has indicated the SPICOLAA offsets and refunds framework conservatively represents an annual State-wide liability of $90 million to local governments in terms of revenue foregone or refunds required.

Further commentary and recommendations on this issue are outlined in section 1.3.6 of this submission.

The LGAQ Submission outlines matters in sequential order of the Bills 2015.

Local Government Feedback

1.1. Chapter 2 – Planning

1.1.1. Temporary Local Planning Instrument (TLPI)

Section 9(4) of the Bills 2015 provides, with the "Minister's agreement in writing", for the making or amendment of a TLPI to commence when a local government, at a public meeting, resolves to give the TLPI or amendment to the Minister for approval.

Whilst it is noted these provisions, in conjunction with the currency period extension and ability to make amendments, are an improvement on the current provisions, the potential delays in receiving the Minister's agreement is still considered an unnecessary bureaucratic delay given the intention for a TLPI to avert the serious risk identified in section 23(1)(a).

A. Recommendation: The LGAQ recommends provisions are included in the Bills 2015 to allow for local governments to enable the 'automatic operation' of a TLPI when resolved by a local government, prior to Ministerial approval.

1.1.2. Power of the Minister

In Section 26 of the Bills 2015, the powers of the Minister have been expanded to allow the Minister to give a local government a direction about an existing or proposed designation and a proposed amendment to a designation. The Minister currently does not have these powers in SPA. Subsection (5) also confers two (2) new directions the Minister may issue to a local government, namely:

- to review a local planning instrument, in accordance with Section 25, and report the results of the review to the Minister; and
- to review a designation and report the results of the review to the Minister.

There is no clear rationale or identified need to expand the powers of the Minister particularly given, as part of Queensland Labor's election commitment to transparency, the pledge to review the proposed legislation to "ensure that it does not place undue power in the hands of the Planning Minister."

B. Recommendation: The LGAQ opposes the further expansion of the Minister's powers without demonstrating the need for change and without agreement of the LGAQ and councils.

1.1.3. Compensation

The LGAQ Policy Statement, which is the definitive statement of the collective voice of local government in Queensland, states:

> *6.1.1.11 Local government opposes the extent of the compensation provisions in current planning legislation, and only supports limited provisions for compensation based upon certain criteria being met before councils would be liable. Compensation rights should only be preserved where an applicant can establish that they have suffered an immediate and demonstrable loss, and claims for compensation should be eliminated where there is no substantive restriction on continuing use of the land for existing lawful purposes and where the only loss is loss of the speculative possibility of future development for some other purpose.*
>
> *6.1.1.12 Compensation should not be available where local planning instruments are made or amended to manage risks associated with natural hazards, including flood, bushfire, landslide, storm tide inundation and coastal erosion.*

The LGAQ broadly supports the intent of the new provisions but reserves its position on the proposed amendment until the Minister's rules, which will be fundamentally important to the process, are drafted and released.

It is also noted that the exemption clause now qualifies risk and harm by requiring the change to reduce a "material" risk of "serious" harm, which arguably re-introduces some of the uncertainty that currently exists under the SPA exemption (Section 30(4)(e)), which makes the existing provisions untenable.

C. Recommendation: The LGAQ recommends amending Section 30(e)(i) by deleting the ambiguous and subjective wording of "material" and "serious".

D. Recommendation: The LGAQ recommends a collaborative approach with the LGAQ and local government in the drafting and development of the Minister's rules.

1.1.4. Designation of premises for development of infrastructure

The LGAQ supports the intention to contemporise the infrastructure designation process. However, local governments have reservations in explicitly extending the process to all private entities (where not previously enacted by State Government) without an accompanying framework that is both transparent and accountable. This represents a significant policy shift by the State Government that could have significant cost and resource implications for local government and broader cumulative impacts on local infrastructure and communities. Such an expansion of powers is seemingly at odds with the Queensland Labour election commitment of transparency and that the State Government would review the proposed legislation to "ensure that it does not place undue power in the hands of the Planning Minister."

It is noted in Section 36, the Minister "must have regard to" all planning instruments that relate to the premises and the written submission of any local government. However, the Minister is not obliged to act in accordance with the submission. Based on poor experiences under the existing process that has depended on the disposition of the Department/Minister of the day, local government still maintains concerns that the framework as proposed may continue to have inadequate regard to local planning, infrastructure and community matters.

Local government experience suggests a lack of transparency and poor formal engagement practices lead to unintended consequences, particularly on local infrastructure networks. Local government interests that are not considered adequately in the designation process result in increased demand and cumulative impacts on local infrastructure which are often challenging or unable to be resolved (e.g. road capacity failures and safety issues).

Local government acknowledges both the Local and Ministerial Guidelines recognise the potential for designated infrastructure to have impacts on local government infrastructure networks (e.g. roads, stormwater, water supply and sewerage) which are fundamental pre-requisites to all other infrastructure. However, planning for State (or private entity) infrastructure should not overlook, or automatically assume, local government provided infrastructure is available or will be provided to support designated infrastructure.

The costs associated with State development should not be carried by local governments. The LGAQ Policy Statement, which is the definitive statement of the collective voice of local government in Queensland, states:

> *6.1.2.7 Contributions towards the costs of providing local government infrastructure associated with State Government projects should be the same as those imposed for similar private sector developments.*

E. Recommendation: The LGAQ recommends that the infrastructure designation process be amended to provide local government a statutory role similar to that of a referral agency which will enable transparency and accountability in decision making, including a dispute resolution process.

F. Recommendation: The LGAQ recommends deletion of Section 112(3)(c) which exempts development by a State Government department, or part of a department, under a infrastructure designation from local government infrastructure charges.

1.2. Chapter 3 – Development Assessment

1.2.1. Categories of development

It is noted the Bills 2015 have retained code/impact categories of assessment, while compliance assessment and self-assessment have been removed altogether (Sections 45 and 60). Further, there is a presumption of approval for existing code assessment (Section 60(2)) which is purported to facilitate a 'cultural change' for code assessment. No demonstrable evidence has been provided to conclude this

supposition or that the new framework will actually enable better strategic planning and higher quality development outcomes. The new rules will require councils to comprehensively review and amend their planning schemes to ensure their codes/benchmarks are appropriately structured for such a new regime.

The LGAQ maintains that no rationale or evidence has been provided to conclusively demonstrate the benefits to the community and most importantly, that the benefits will outweigh the costs to local governments (and industry) given the necessity to amend planning schemes and change established business systems and processes. Local governments maintain that the existing levels of assessment are not fundamentally broken and that the proposed changes (including removal of compliance assessment and self-assessment without workable replacements) will not provide the perceived outcomes sought-after, but merely divert limited resources and priorities from other proactive processes and structural initiatives already underway.

The LGAQ acknowledges compliance assessment is not widely used (as originally intended) and has often been limited to secondary approval processes. Notwithstanding, councils do utilise compliance assessment for a number of matters such as:

- simple operational works requiring compliance with standard drawings (especially concerning streetscape treatments, landscaping, stormwater management plans, traffic access crossovers and traffic plans);
- survey plan endorsement; and
- planning matters where further development approvals are required but the parameters of such approvals have already been considered (i.e. through a preliminary approval).

The removal of compliance assessment (and self-assessment) will require councils to review and redraft their planning schemes and transition existing compliance assessment (and self-assessment) to the 'higher level' of code assessment. This escalation in levels of assessment appears counter-intuitive and will merely confuse the scope and operation of the code assessment category.

G. Recommendation: The LGAQ recommends the Parliamentary Committee fully consider the value, workability and net benefit of the proposed categories of assessment in Section 45 given the time and cost implications of the proposed amendments.

H. Recommendation: To meet transitional timeframes, the LGAQ recommends the State Government:

- establish a Planning Reform Subsidy Scheme to offset the cost of reviewing existing planning schemes;
- provide an expert panel to respond to local government transition enquiries in a timely manner;
- provide a consultancy service for those councils who do not have necessary in-house expertise to review and update planning schemes; and
- undertake strategic planning improvement projects to showcase local government leading practice in plan-making.

1.2.2. Referral agency's response

Section 56(2) appears to prohibit a referral agency from imposing conditions (or modify previous conditions) when related to a variation request. The rationale for this limitation is unclear.

I. Recommendation: The LGAQ recommends amendment to Section 56(2) to allow referral agencies to impose conditions on variation requests.

1.2.3. Decision Notice

There is a new requirement for an assessment manager to publish a notice about a decision on its website for certain development applications (Section 63(4)). The notice must include, among other things:

- if the application required impact assessment, any relevant matters, a description of matters raised in submissions and how the assessment manager dealt with the matters raised in the submission;
- reasons for the assessment manager's decision (Section 63(7)(d)); and
- if the application was approved and did not comply with any or all of the benchmarks, the reasons why the application was approved (Section 63(7)(e)).

The new requirements are purportedly being introduced to ensure greater transparency in decision making. However, in an applicant-based planning system built on a presumption of approval, to now require complying applications (particularly code assessable) that comply with the codes to be published through an additional notice on council's website is both perverse and excessive. Based on published State Government reporting for the State's 19 high growth councils, where 90 per cent of the development applications occur, this will equate to at least 17,000 development applications per year that are either approved or refused requiring additional notices.

It must be noted that many local governments in Queensland do not have the information technology resources and capacity to publish such notices in any meaningful way on their websites. In addition, a broader lack of planning expertise in many councils will divert already limited resources into preparing and checking administrative tasks that add limited or no value to the planning system.

It must also be noted that no detailed consultation or investigation was undertaken in drafting these additional requirements in the Bills 2015. They were not included in previous consultation drafts and appear to have lacked due consideration.

A similar obligation has been imposed on referral agencies in specified circumstances under Sections 56(6) and (7).

J. Recommendation: The LGAQ recommends the removal of the additional requirement in Section 63(4) for a local government to publish a notice about a decision on its website for certain development applications.

Section 63(7) has been incorrectly numbered. It should be Section 63(5).

K. Recommendation: The LGAQ recommends the erroneous section numbering be amended.

Section 83(4)(d) incorrectly refers to Section 45(2)(b), which does not exist.

L. Recommendation: The LGAQ recommends the erroneous section numbering be amended or clarified.

1.3. Chapter 4 – Infrastructure

1.3.1. When charge may be levied and recovered

Section 118(12)(b) refers to the charge being "payable by the applicant". Given the specified applicant is a person/entity often acting on behalf of a client (builder, property owner, developer etc.) this provision is ambiguous. Section 279, which provides different definitions for 'applicant', further complicates the provision. Given Section 118(12)(c) importantly attaches the charge to the premises (/land), the actual requirement for Section 118(12)(b) is not clear.

M. Recommendation: The LGAQ recommends reviewing the applicability of Section 118(12)(b).

1.3.2. Limitation of levied charge

Section 119 provides that a levied charge may only be for additional demand placed on trunk infrastructure that is generated by a development and that additional demand must not include the demand on trunk infrastructure generated by a previous lawful use that is no longer taking place on the premises.

This provision is of concern as there is no limitation upon how far back the use was carried out in order for the additional demand to be ignored. This is particularly problematic regarding abandoned uses and amalgamated lots and has resulted in an administrative burden on councils and an increase in the number of disputes with applicants regarding evidence. For example, an applicant might argue an abandoned warehouse that has also previously provided manufacturing, retail and light industry uses under different planning and development legislation should be entitled to infrastructure credits for these uses irrespective of whether the infrastructure was either available, or could actually be conditioned for at the time. This argument is unreasonable, given the historic uses have no relevance to the current development or infrastructure that is provided to the premises to service the new land use.

N. Recommendation: To remove any doubt, reduce unnecessary disputes, and maintain equity of existing use rights, the LGAQ recommends amending section 119(3)(a) to state that the demand generated by a previous use that is no longer taking place may be included where:

- an infrastructure requirement that applies or applied to the use or development has not been complied with; or
- there was no infrastructure requirement for the previous use.

1.3.3. Negotiated Decision Notice

Section 124(4) limits local government to a single negotiated notice. Similarly, Section 76 also limits local government to a single negotiated notice. Council feedback has indicated the ability to issue more than one negotiated decision notice would be useful to amend errors or minor omissions. Without such an ability to amend expeditiously, a more formal amendment or appeal process would be required that does not benefit council, the industry or the community.

O. Recommendation: The LGAQ recommends amending Sections 76 and 124 of the Bills 2015 to allow more than one negotiated decision notice to be issued.

1.3.4. Ability to set conditions relating to trunk infrastructure

Sections 126 and 127 identify limitations for applying necessary trunk infrastructure conditions but do not allow for a broader consideration of scenarios where the imposition of trunk infrastructure condition is 'reasonably' required.

Appendix 1 outlines a scenario that the Bills 2015 do not allow for where councils should have the ability to impose a necessary trunk infrastructure condition on development for infrastructure on other premises and is not necessary to service the subject premises (but is necessary for the network). These scenarios are not uncommon and facilitate the orderly construction and operation of the respective infrastructure network. In these instances the infrastructure is fully offsetable/refundable to the developer.

Without this legislative ability, the only available mechanism is through an Infrastructure Agreement which is both time consuming and costly for all parties involved.

P. Recommendation: The LGAQ recommends amending Sections 126 and 127 to clarify that necessary trunk infrastructure includes infrastructure that is necessary for the functioning of the trunk infrastructure network, which services the premises.

1.3.5. Section 128 Example

The example in Section 128(3) should be cited after Section 128(2).

Q. Recommendation: The LGAQ recommends moving the example to after Section 128(2).

1.3.6. Offset or refund requirements

The Bills 2015 do not propose significant changes to the existing offset/refund arrangements that were introduced in the SPA in July 2014 through the SPICOLAA. The SPICOLAA introduced an unprecedented range of new entitlements for applicants in relation to trunk infrastructure dedicated to local governments as a condition of development approvals (and the associated offsets and refunds). These entitlements for applicants are neither financially sustainable for local government nor administratively efficient. Prior to the SPICOLAA:

- offsets and refunds were limited to infrastructure identified in a council's Priority Infrastructure Plan (PIP);
- offsets were limited to the infrastructure value identified in a council's PIP;
- refunds were limited to the money collected in relation to the relevant infrastructure; and
- an applicant could not offset the share of the infrastructure servicing the development site.

These provisions, although not precise, but commensurate to the assumptions and variability of the forward-planning that can be undertaken by local government, provided a judicious basis for conditioning and did not expose councils to financial liabilities in relation to development approvals. However, the SPICOLAA changed the provisions so that:

- local governments must offset the total value of dedicated trunk assets against the (capped) infrastructure charges for the development. If the value of the dedicated asset exceeds the value of the charges, councils must pay the applicant the outstanding balance as a 'refund' (out of general revenue if necessary);
- an applicant can claim an offset / refund for the full value of the dedicated trunk asset inclusive of the portion of the asset to service their site;
- an applicant can claim the full, actual value of the infrastructure, (not the value identified in the planning scheme); and
- an applicant can apply to have non-trunk infrastructure recognised as trunk infrastructure and, if successful, councils must offset and/or refund its value.

These changes are now having a significant impact on the financial position of local governments. It is also creating uncertainty about liabilities that may arise in relation to development approvals.

The rationale for the SPICOLAA changes appear to have been to solely assist industry, particularly those applicants that provide trunk infrastructure as part of their development. The rationale for the existing framework is fundamentally flawed. Local Government Infrastructure Plans (LGIPs) cannot anticipate all development options, scenarios and sequencing. Councils generally develop land-use plans with sufficient oversupply of capacity to enable development proposals to come forward, with the confidence that they would not be left with the cost of the infrastructure to support the development proposals.

The existing framework, implemented through SPICOLAA, effectively forces local governments to cover the cost of all new trunk infrastructure, whether funded or not, that is constructed as part of newly approved development. This represents a significant financial risk and liability to local governments. Conversely, the State Government does not propose to expose itself to this risk in the forward-planning and funding of its own infrastructure through the State Infrastructure Plan.

The cumulative impacts of the SPICOLAA offsets and refunds framework are already being felt by councils, particularly where large developments with substantial infrastructure require refunds, resulting in limiting councils' ability to plan and budget appropriately and posing a genuine risk to councils' financial sustainability. In the absence of the State Government undertaking any genuine monitoring or review of the 2014 reforms, a preliminary analysis by the LGAQ has indicated the SPICOLAA offsets and refunds framework conservatively represents an **annual State-wide liability of $90 million to local governments in terms of revenue foregone or refunds required**.

The net effect is the making of a system that benefits only larger developments (that typically build trunk infrastructure as part of the development) by drawing down the infrastructure charges revenue collected from all development that is meant to be spent on trunk infrastructure to benefit all network users.

R. Recommendation: The LGAQ recommends amending Sections 127 and 128 to:
- limit refunds to the money collected (from infrastructure charges) in relation to the relevant trunk infrastructure;
- remove the ability for the applicant to offset the share of the infrastructure servicing the development site; and
- limit offset and refunds to infrastructure identified in a council's LGIP.

S. Recommendation: The LGAQ recommends the Parliamentary Committee recommend to the State Government to undertake a comprehensive review of the 2014 infrastructure charging reforms, in particular the offset and refunds requirements, including a cost-impact analysis and establishment of an ongoing monitoring and reporting framework paid for by the State Government.

1.3.7. Application to convert infrastructure to trunk infrastructure

As referred to above, the SPICOLAA introduced provisions to allow discrete applications to convert non-trunk infrastructure to trunk infrastructure, and if successful, the council must offset and/or refund its value. While it is acknowledged the Bills 2015 propose to reduce the timeframe in which applications can be received (i.e. a proposed arbitrary 1-year) that limits council liability, the LGAQ has consistently maintained the process is confusing, ostensibly unnecessary and adds a duplicative layer of bureaucratic red-tape.

The conversion process was originally ill-conceived on evidence-less commentary provided as part of the consultation process (which led to SPICOLAA) that some local governments were misusing non-trunk infrastructure conditions. However, the basis on which non-trunk conditions can be applied have always been open to appeal. It was stated by industry representatives that the avenue of resolving the perceived problem through an appeal was considered undesirable due to the uncertainty of which conditioning powers were being applied and the time and inhibiting costs of the court process. In response, the SPICOLLA introduced a range of provisions including the requirement to cite the section of the SPA used for conditioning and for new appeal rights of hearing such matters to be resolved through the more streamlined and accessible Building and Development Dispute Resolution Committees.

These amendments alone should have satisfied the unfounded concerns of councils deliberating misusing the conditioning powers available. However, the SPICOLLA went further to also introduce a discrete process to convert non-trunk infrastructure to trunk infrastructure, rather than follow the existing development assessment process that allows for representations to be made during the appeal period where an applicant can seek amendments to conditions prior to the end of the appeal period (i.e. 20 business days after notice of decision is given).

The introduction of the conversion application process has led to an increase in the need for infrastructure agreements to remove/reduce the risk of these conversion requests being lodged in the future and to give councils certainty of offsets and refunds associated with a development approval. Council feedback has also outlined the process has led to speculative conversion applications by applicants who simply want to test if they can reduce/remove their costs (i.e. to have a go).

It is acknowledged the timeframe for submitting such an application is proposed to be reduced, to an arbitrary timeframe of one (1) year however, the LGAQ maintains this period is still too long and there is no valid reason why this timeframe is not aligned with the known appeal period (i.e. 20 business days). Anecdotal feedback has suggested that applicants require longer than the twenty (20) business days to consider the nature and impacts of the non-trunk infrastructure condition, however this is unfounded and completely rejected by councils.

T. Recommendation: The LGAQ seeks the complete removal of the conversion application process. All development applications should follow the standard development assessment process by representations made through changes during the appeal period following the issue of decision notice.

1.3.8. Remove Third-Party State Interest Review process

Although not prescribed in the Bills 2015, the LGAQ fundamentally disagrees with the additional requirement introduced as part of the SPICOLLA amendments in 2014 for a local government to engage an “Appointed Reviewer” at its own cost to undertake LGIP compliance checks.

The LGAQ maintains the State Government is unequivocally shifting the costs of a State Interest review onto local governments. The LGIP, like a PIP, is a key component of a planning scheme and should be reviewed as part of the State Interest review function undertaken by the State. As such, all costs of a State Interest review must be borne, in principle, by the State Government. To require local governments to pay for their own State Interest review is unreasonable and a cost shift to councils and their local communities. No other local government instrument requires such a review that may cost council between $19,000 and $35,000 (a conservative range for a medium size LGIP, with some larger LGIP councils citing more than double the costs).

The LGAQ also maintains that it is unreservedly incongruous to allow a local government’s consultant to also be an Appointed Reviewer, but not an experienced local government officer.

U. Recommendation: The LGAQ seeks the removal of the onerous ‘third-party appointed reviewer’ requirement. At the very minimum, the State Government must fund the costs of an Appointed Reviewer undertaking the State Interest Review.

1.4. Chapter 5 – Offences and Enforcement

1.4.1. Enforcement orders

The qualification “subject to an order of the court, an enforcement order, other than an order to apply for a development permit" has been added at the start of Section 175(6), which relates to an enforcement order made by the Magistrates Court. This qualification has not been added to the start of Section 179(6), which relates to an enforcement order made by the Planning and Environment Court. The reasoning behind the additional words, and the inconsistency between the two provisions, is unclear. However, the provision suggests that a prosecuting authority would need to seek a specific order from the Magistrates Court in order for the enforcement order to attach to the premises, whereas this would be automatic in the Planning and Environment Court.

V. Recommendation: The LGAQ recommends Section 175(6) to read "unless the court orders otherwise..." as opposed to "subject to an order of the court..." so that there is not a positive obligation on a prosecuting authority to seek an order for an enforcement order to attach to the premises.

1.5. Chapter 8 – Transitional Provisions and Repeal

1.5.1. Declaration for certain continued provisions

Section 291 declares that the effect of the existing savings provisions in SPA do not end just because SPA is repealed. However, the provision in the Bills 2015 does not apply to Section 714 of the SPA, which deals with a local government taking or purchasing land. This may have possible implications for local governments that have obtained Governor in Council approval to take or purchase land pursuant to Section 714 of SPA during the transition period. If reference Section 714 is not expressly included, questions might arise as to whether the local government should obtain fresh Governor in Council approval under the Bills 2015 in order to proceed with the taking or purchase of land.

W. Recommendation: The LGAQ recommends the State Government review Section 291 in regard to the lack of reference to Section 714 of the SPA and the possible implications for local government.

1.5.2. Infrastructure Charges Resolutions

Section 301(5)(b) refers to Section 975A in SPA. However, that section does not exist. This may be an incorrect reference to Section 976 in SPA.

X. Recommendation: The LGAQ requests further clarification of Section 301(5)(b) and in regard to commencement of the legislation.

1.6. Schedule 1 Dictionary

1.6.1. Definition of “operational work”

The definition of operational work has changed significantly from the SPA definition. The new definitions represent only part of the current definition. Certain items would not appear to fall under the proposed definition (e.g. conducting a forest practice, placing an advertising device, taking of water such as installing a pump, or damaging a marine plant). Determining what activities are, or are not, operational works could be difficult if subject to the test of whether they ‘materially affect the premises’. For instance, it is questionable whether tidal work ‘materially affects premises’ and, if so, which premises (adjoining property or canal).

Y. Recommendation: The LGAQ recommends amending the proposed definition to retain the existing SPA definition.

1.6.2. Definition of "use"

The definition of "use" has not changed from that in the consultation draft Planning Bills 2015. The LGAQ has maintained a consistent position on the potential issues with this change in definition and has not received a considered or adequate response from the State Government to-date.

Case law on the SPA definition of ‘use’ makes it clear that secondary uses forming part of a primary use must not only be incidental to, but also necessarily associated such that it would be impossible for the primary use to be carried out in the absence of the incidental use. An example of this is a service station with a fuel storage tank. The fuel storage is not considered a separate use as it is clearly

incidental to and necessarily associated with the service station, particularly as the service station could not operate without the fuel storage.

The proposed definition related to 'use' fundamentally expands the activities that may be carried out because secondary activities need not be necessarily associated with the primary use to be considered part of that use and as a result, lawful. While the flexibility of including broader activities as part of a use may be beneficial in certain circumstances, the LGAQ maintains that the regulation and enforcement of activities that were not contemplated as part of a development approval (although ancillary) may prove problematic for councils and undermine local communities' understanding of the development process. For example, using the above service station scenario, it might be argued that a weekend market that takes place in the service station car park is part of the service station use because it is subsidiary to the primary service station use, despite not being 'necessarily associated with' the service station. Under the SPA such an argument could not be made.

Other examples include those relating to helipads and airstrips on residential land where owners have claimed that the activities merely form part of the residential use of their land. However, the Planning and Environment Court has traditionally held that those uses do not form part of the use because they are not 'necessarily associated' with the residential use. There are concerns that the introduction of broadened 'ancillary' uses could open the door for intrusive activities to commence without proper regulation that manages impacts on local neighbourhoods and protects community rights.

In any event, the Queensland Planning Provisions (QPP) already contemplates the concept of ancillary uses in the mandatory suite of defined uses. It is assumed that the proposed local planning instrument 'required content will similarly regulate ancillary uses. The table of defined uses in the QPP clearly identifies ancillary uses that may form part of a use, as well as those that may not. The proposed broader definition of 'use' conflicts with these provisions, meaning amendments to existing QPP complaint planning schemes would have to be made in order to address this inconsistency.

As evidenced in the recent decision in *Witmack Industrial Pty Ltd v Toowoomba Regional Council [2015] QPEC 007*, disputes about what constitutes an 'ancillary use' still exist. If the broader definition were to be introduced, such disputes would only be exacerbated. This subtle change has significant implications for local government.

Z. Recommendation: The LGAQ seeks the retention of the current SPA definition of 'use' to maintain certainty to both the public and local governments when considering development applications.

1.7. Specific to the Planning and Environment Court Bill 2015

1.7.1. Criminal Jurisdiction of the Planning and Environment Court

The LGAQ identifies that giving the Planning and Environment Court criminal jurisdiction would be beneficial to local governments, particularly having judges with specialist knowledge of planning-related matters and the cost savings of not having to prosecute a criminal matter in the Magistrates Court as well as a civil matter in the Planning and Environment Court.

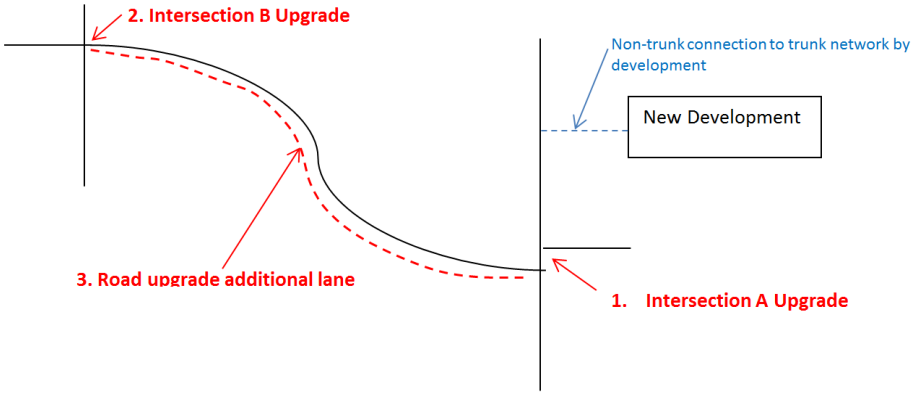
AA. Recommendation: As per previous representations, the LGAQ recommends the Planning and Environment Court be given criminal jurisdiction that will both save costs and streamline existing processes.

2. Appendices

2.1. Appendix 1 – Limitation of Necessary Infrastructure Conditions (Sections 126 & 127 (1))

Scenario - Transport Infrastructure upgrades are identified in the LGIP as follows:
1. Intersection A upgrade;
2. Intersection B upgrade; and
3. Road upgrade to include an additional lane.

A new development only needs infrastructure item 1 (Intersection A upgrade) to service the development in order for it to proceed but not the other two.



Under the above scenario, only Intersection A upgrade may be included in a necessary infrastructure condition since only it is required to service the development for it to proceed.

However in this scenario, it is beneficial that all 3 LGIP items are undertaken at the same time by the developer as a single project in order to avoid further disruptions to the network and community (including the development) at a later time.

Therefore, councils should have the ability to impose a necessary trunk infrastructure condition for the development where reasonable (irrespective whether it is actually needed to service this particular development) to construct all these roadworks.

Without this legislative ability, the only alternate is for councils to rely on the good will of all parties to negotiate through an Infrastructure Agreement.

To be clear, the cost of this scenario would be fully offset / refunded to the developer since all works are all clearly identified in the LGIP and are therefore catered for in the local government works program and budgets.

3. Attachments

3.1. Attachment A – Local Government Planning Reform Position Paper, dated 8 July 2015

ATTACHMENT
TO
SUBMISSION NO. 089

LGAQ
LOCAL GOVERNMENT ASSOCIATION OF QUEENSLAND

8 July 2015

The Honourable Jackie Trad MP
Deputy Premier
Minister for Transport
Minister for Infrastructure, Local Government and Planning
Minister for Trade

Dear Deputy Premier Jackie

Local Government Planning Reform Position Paper

Thank you for your letter of 27 May 2015 regarding the State Government's ongoing planning reforms. I also welcome the opportunity to meet with you and council representatives to discuss local governments' thoughts on the changes considered most important in the current legislative framework.

The LGAQ also welcomes the release of the State Government's directions paper, titled *Better Planning for Queensland*. The LGAQ broadly supports the principles outlined in the directions paper on which the new planning Bill will be based. These include:

- Enabling responsible development
- Stimulating economic growth and innovation
- Ensuring genuine public participation in the planning process
- Delivering clear and concise legislation that supports effective and efficient planning and development assessment.

To inform the development of the new planning Bill (and broader reforms), please find enclosed the LGAQ Submission titled *Local Government Planning Reform Position Paper*. The Position Paper was unanimously endorsed on 25 June 2015 by the LGAQ's Policy Executive and provides the definitive position of Queensland local governments on planning reforms and outlines the:

- Ongoing reforms supported by local governments
- Priority local government issues, and
- Proposed local government reforms.

I am eager to meet with you to discuss the significant matters in the Position Paper as soon as practicable and in advance of the 'Planning Summit' to be held on 28 July 2015.

Please don't hesitate to contact either myself, or Mr Greg Hoffman, General Manager – Advocacy, LGAQ on (07) 3000 2245 or 0418 756 005, to discuss these matters further, or to arrange for our meeting.

Yours sincerely

Margaret de Wit

Cr Margaret de Wit
PRESIDENT

Cc – Mr Stephen Johnston, Acting Director-General, Department of Infrastructure, Local Government and Planning

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Local Government Association Of Queensland Ltd.
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Local Government
Planning Reform Position Paper

Submission

Local Government Association of Queensland Ltd
June 2015

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association setup solely to serve councils and their individuals' needs. The LGAQ has been advising, supporting and representing local councils since 1896, allowing them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places that count; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and delivering them the means to achieve community, professional, and political excellence.

1. FOREWORD

On 25 June 2015, the LGAQ's Policy Executive unanimously endorsed the *Local Government Planning Reform Position Paper*. The Policy Executive is responsible for the determination of the LGAQ's policy on behalf of member councils. The Policy Executive consists of fifteen (15) district representatives plus the President.

Cr Margaret de Wit
Brisbane City Council
President

Cr Alf Lacey
Palm Island Aboriginal Shire Council

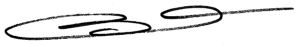
Cr Greg Belz
Rockhampton Regional Council

Cr Rob Loughnan
Maranoa Regional Council

Cr Ray Brown
Western Downs Regional Council

Cr Bill Shannon
Cassowary Coast Regional Council

Cr Deirdre Comerford
Mackay Regional Council

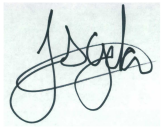


Cr Peter Matic
Brisbane City Council

Cr Wayne Kratzmann
South Burnett Regional Council

Cr Joe Owens
Longreach Regional Council

Cr Fred Gela
Torres Strait Island Regional Council



Cr Pam Parker
Logan City Council

Cr Jennifer Hill
Townsville City Council

Cr Fred Pascoe
Carpentaria Shire Council

Cr Allan Sutherland
Moreton Bay Regional Council

Cr Paul Pisasale
Ipswich City Council

2. INTRODUCTION

On 25 May 2015, the State Government announced its objectives for continuing planning reform across the Queensland, including the introduction of a new planning Bill by October 2015. The new planning Bill will be based on the following principles:

- Enabling responsible development
- Stimulating economic growth and innovation
- Ensuring genuine public participation in the planning process
- Delivering clear and concise legislation that supports effective and efficient planning and development assessment.

In conjunction with the announcement, the Deputy Premier and Minister for Infrastructure, Local Government and Planning, the Hon. Jackie Trad MP, released a directions paper for comment titled *Better Planning for Queensland*.

The State Government also stated its intention to consult and engage with stakeholders and the broader community as the legislation is developed. This will include workshops with communities, industry and local government with a 'Planning Summit' to be held on 28 July 2015.

The LGAQ applauds the State Government's commitment to consult and engage with stakeholders in the development of the new planning Bill. The LGAQ also commends the State Government's formal acknowledgement that local government plays a key role in Queensland's planning and development system and that the lengthy planning reform process has placed an ongoing burden on councils. In addition, the State Government has committed to consider funding support for local governments to manage a transition process to new planning legislation. The ALP's response to the LGAQ's *Queensland 2015 State Election Local Government Policy Plan*, stated:

> *Local government plays a key role in the State's planning and development framework. Recent implementation of the Sustainable Planning Act 2009 and the current government's proposed replacement Planning and Development legislation places continuing burden on councils to adapt to current planning law. A future Labor Government will review the current planning reform process if it comes to office. In the event a new planning bill is enacted, funding support for local governments to manage the transition to a new planning framework will be considered.*

Further:

> *Queensland Labor believes effective urban and regional planning is critical to Queensland's liveability, sustainability and prosperity. We believe in a planning system that is:*
>
> - *fair and flexible, to effectively manage the challenges of urban growth and rural decline*
> - *open and accountable, to ensure communities and neighbourhoods can fully participate in the planning and development decisions that affect their local areas*
> - *integrated and efficient, to ensure confidence and certainty of decision making with an aim for a streamlined, prompt approvals process*
> - *future focussed, with an emphasis on long-term strategies that deliver sustainable development*
> - *grounded in local communities, to recognise and support the central role of local government in land-use planning and decision making.*
>
> *The former Queensland Labor Government commenced reforming planning laws at the commencement of its last term in office by enacting the Sustainable Planning Act. This was a result of a reform process of planning laws which lasts to this day.*
>
> *A Queensland Labor Government will retain the State Assessment and Referral Agency as part of the Queensland planning framework.*
>
> *As part of the Queensland Labor's commitment to transparency, if it is elected to office it will review the Planning and Development Bill to ensure that it does not*

place undue power in the hands of the Planning Minister. A Queensland Labor Government will also consider in the event a new bill is enacted, funding support for Local Governments to manage the transition to a new planning framework.

A future Queensland Labor Government will also ensure that Infrastructure Charges Reform is conducted with proper consultation and implemented in a well-defined process.

A future Queensland Labor Government will reinstate appropriate standards in state planning instruments to allow for local governments to adequately take into account the future effects of climate change in their local planning schemes.

The LGAQ broadly supports the principles outlined in the State Government's directions paper on which the new planning Bill will be based. Notwithstanding, the Local Government Planning Reform Position Paper provides the definitive position of Queensland local governments on planning reforms and details three specific areas, namely:

- **Ongoing reforms supported by local governments**
- **Priority local government issues, and**
- **Proposed local government reforms.**

The Local Government Planning Reform Position Paper has been informed by the LGAQ Planning Reform Reference Group and LGAQ Infrastructure Charges Think Tank, consisting of senior local government officers from twenty-two (22) councils.

3. ONGOING REFORMS SUPPORTED BY LOCAL GOVERNMENTS

It is important to recognise local governments' long-standing commitment to planning reform. Individually, councils have made significant investments over the past decade toward many successful business improvement projects and initiatives. Councils have also invested in, and collaborated on, sector-wide initiatives including: *Regulation Reduction Incentive Fund* (RRIF); *RiskSmart*; *Housing Affordability Fund Target 5 Days* (HAF-T5); and *Development Assessment Partnership Process – Operational Works and Large Subdivisions Project* (DAPR-OWLS). Most recently, the *Concept to Construction – Development Assessment Innovation* (DAI) *Project* was widely applauded by industry and has already proven successful on the ground, enabling local governments to adopt innovative development assessment systems by leveraging off verified development assessment best practice in Queensland.

The DAI Project was a partnership between the State Government, the LGAQ and the Council of Mayors (SEQ) and built on the development assessment framework of leading practice already being developed in South-East Queensland councils. The project focused on nine (9) of Queensland's regional high growth councils and fostered collaborative partnerships between Queensland councils and the private sector to deliver genuine improvements and outcomes to the development industry and local communities.

The DAI Project was finalised in July 2014 having fully achieved each of its deliverables, including:

- assessing each participating council's development assessment business against the Council of Mayors (SEQ)'s *Framework of Leading Development Assessment Practice*;
- developing two-year action plans for each participating council;
- working with participating councils to implement solutions of their choice, including for Simple Applications – RiskSmart and Fast Track Process; Complex Applications – Development Partnership Process; Operational Works Applications – 3rd Party Accredited Consultant Method; and Plan Sealing – Streamlined Plan Sealing Process; and
- implementation and support of pilot projects.

As part of the project, the Council of Mayors (SEQ) developed the *Queensland Development and Planning Portal*. The Portal provides a useful online collaboration space for local and State Government and other stakeholders to collaborate and share ideas, learnings and initiatives relevant to development assessment and other planning and development matters.

The LGAQ in collaboration with the Council of Mayors (SEQ) and the State Government is currently undertaking the Development Assessment (DA) Monitoring Project that will develop an electronic reporting tool to provide comprehensive performance reporting for development assessment processes of the participating local governments.

The reporting tool will connect into existing council software to extract the relevant development assessment data to generate performance reports. These reports can be generated within council itself and will be valuable for Mayors, Chief Executive Officer's and relevant council executives. Importantly, participation in this Project will replace the need for the time consuming and expensive State Government Development Assessment Monitoring and Performance Program (DAMPP). Project funding has been made available for the twenty-one (21) participating local governments.

These local government led initiatives are ongoing and are largely driven through leadership, capacity building, and operational improvements. The very real danger is that the implementation of these proven initiatives will be sidelined (or even undone) by further unnecessary legislative changes.

Local governments have also broadly supported many of the recent State Government-led planning reforms that are making positive change in terms of increased consistency and red tape reduction. These include:

- Improvement of the State's involvement in the development assessment process through the establishment of the State Assessment Referral Agency (SARA)
- Implementation of the single State Planning Policy (SPP)
- Review and reduction in number of Integrated Development Assessment System (IDAS) forms
- Moving the establishment and jurisdiction of the Planning and Environment Court (in lapsed planning Bill) to specific court legislation
- Proposed increase (in lapsed planning Bill) in penalties for development offences from 1665 penalty units to 4500 penalty units, thereby increasing councils' confidence in lowering levels of assessment in the preparation of new planning schemes
- Proposed introduction (in lapsed planning Bills) of exemption certificates for some assessable development, pending the development of appropriate limitations and guidance
- Proposed simplification (in lapsed planning Bills) of State Planning Instruments
- Increasing the currency period of Temporary Local Planning Instruments (TLPIs) to two (2) years
- Leading practice initiatives by the State Government and local government, such as the Development Assessment Monitoring Facility Project.

Notwithstanding the above, local governments identified considerable limitations in the now lapsed planning Bills. The LGAQ Submission on the lapsed planning Bills, dated 6 February 2015, identified forty-two (42) recommendations. Given the extent of concerns, the LGAQ Policy Executive unanimously resolved, in February 2015, to seek immediate feedback from the Mayors of the State's twenty-four (24) high growth councils on whether their council supports:

i. the continued development of the lapsed planning Bills having regard to the identified concerns in the LGAQ Submission; or
ii. the retention of the current *Sustainable Planning Act 2009* with appropriate / relevant reforms to address previously identified concerns.

The results received indicated twenty-one (21) councils' preference to retain the current Sustainable Planning Act 2009 (SPA) with appropriate / relevant reforms to address previously identified concerns. The remaining three (3) council responses were non-committal to either option.

These results confirmed the feedback previously received from local governments that the lapsed planning Bills were deficient and that they had neither identified a need for, nor sought, holistic change to Queensland's planning legislation.

4. PRIORITY LOCAL GOVERNMENT ISSUES

A number of recent (amendments to the SPA) and proposed reforms (as part of the lapsed planning Bills) are of fundamental concern to local government as highlighted in previous LGAQ and council submissions. In response to these concerns, local governments recommend the following priority planning reforms to the new State Government:

i. Retain existing levels of assessment, with improvements to compliance assessment
ii. Remove proposed de-coupling of public notification requirements
iii. Provide an automatic indexation of maximum adopted charges
iv. Restore the ability for councils to set conditions relating to trunk infrastructure
v. Provide equitable offset or refund requirements to ensure financial sustainability of councils
vi. Remove the unnecessary red-tape application process of converting trunk infrastructure conditions
vii. Remove the unnecessary LGIP transitional timeframes and 3rd party State Interest review process
viii. Improve Community Infrastructure Designation processes, including for local government
ix. Review the proposed definition of "use" to protect community rights and to avoid having to make unnecessary amendments to existing planning schemes
x. Review the need to retain core planning process in principal legislation to provide confidence and transparency
xi. Improve the existing compensation provisions for planning scheme changes managing risks associated with natural hazards.

4.1. Retain existing levels of assessment, with improvements to compliance assessment

- No rationale or evidence has been provided to demonstrate the purported benefits of the changes to the levels of assessment outweigh the costs to local governments (and industry) to change established business systems and processes. Local governments maintain the levels of assessment are not fundamentally broken and that the proposed marginal changes will not provide the perceived outcomes sought-after, rather merely distract limited resources and priorities from other proactive processes and structural initiatives already underway.

- Currently, many local governments have either recently completed or are still finalising planning schemes in accordance with the SPA and will now potentially be required to transition to a new framework which will inevitably be expensive, time consuming and resource intensive. The very real issue of 'change fatigue' is not just a concern of councils, but also the communities they represent. Council feedback suggests that constant legislative change is not in the public interest and that a period of regulatory stability is required to allow recent planning reforms and SPA planning schemes to settle and be then comprehensively and impartially evaluated.

- In the absence of a transparent and comprehensive regulatory impact process associated with the lapsed planning Bills, Logan City Council estimates that the cost of transitioning their existing SPA scheme to the lapsed P&D Bill is in the order of $1,221,000 (+ contingency). Further broken down these transitional costs include:

  Officers:*
  Updates to the Planning Scheme - $325,000:
  - 3 x officers (8 months)
  - 1 x senior officer (8 months)

  Business System Officers - $280,000:
  - 4 x officers (8 months)

  Updates to DA Processes - $250,000:
  - 2 x officers (8 months)
  - 1 x senior officer (8 months)

  Business Analyst (4 months) - $96,000

  External Costs:

- Legal Review - $150,000
- Pathway System Update - $30,000
- Reporting Software - $50,000
- Marketing Collateral - $30,000
- Website Updates - $10,000

Total: $1,221,000 + contingency

- Logan City Council has also estimated the costs of transition for a new Act which retains the IDAS, including current levels of assessment (as proposed in this paper), and with reduced statutory development assessment timeframes as follows:

Officers:*
Updates to the Planning Scheme - $22,500:
- 3 x officers (1 month)
- 1 x senior officer (2 months)

Business System Officers - $23,000:
- 4 x officers (2 months)

Updates to DA Processes - $43,750:
- 2 x officers (3 months)
- 1 x senior officer (3 months)

Business Analyst (1 month) - $24,000

External Costs:
- Legal Review - $10,000
- Pathway System Update - $10,000
- Marketing Collateral - $10,000

Total: $143,000 + contingency

**Please note, some of the time commitments (months) in these scenarios are not FTE and may include other work priorities.*

- As a way of comparison with a regional local government, Mackay Regional Council conservatively estimates the costs associated with transitioning to a new Act is in the order of $700,000 plus. These costs include: changing internal IT systems, templates, processes, procedures, planning scheme amendments, internal training and public consultation.

- *In the absence of demonstrable net benefit, the LGAQ seeks no changes to the existing levels of assessment in the new legislation, except for proposing improvements to the existing 'compliance' level of assessment. As per previous LGAQ and council submissions, compliance assessment has not been widely utilized due to its cyclical process and inability to finalise or progress an application. The LGAQ seeks amendments to legislation for compliance assessment to include refusal provisions (with associated appeal rights), or where considered appropriate, the ability to progress the application at a higher level of assessment.*

- In addition to avoiding significant and largely unnecessary transitional costs, improvements to compliance assessment will provide the 'missing piece' of the development assessment framework that will enable lower levels of assessment to be more readily utilised. In practice, it is envisaged these amendments will allow more operational works and code assessable applications to be moved to compliance assessment.

4.2. Remove proposed de-coupling of public notification requirements

- Public notification is traditionally associated with, and necessary for, large, complex, or unanticipated development proposals. De-coupling requirements to notify applications with the highest level of assessment and 3rd party appeal rights does not have clear demonstrable benefits and may cause unnecessary complication and community angst by creating false expectations and misleading the public regarding their rights of appeal.

It may also result in more development applications having no notification and / or appeal rights. This approach is at odds with the principles identified by the State Government for ongoing planning reform which states that land use planning is grounded in local communities, with local government having the central role in land-use planning and decision making.

- *For simplicity and ease of understanding by the public, the LGAQ seeks the retention of public notification and appeal rights with the highest level of assessment in the new legislation.*

4.3. Provide an automatic indexation of maximum adopted charges

- The maximum adopted charges, introduced by the previous ALP State Government, have been left unchanged since their introduction in 2011 (e.g. $28,000 for a detached dwelling). Infrastructure charges have already dropped in value by over 10% in real terms since 2011 due to indexation not being applied, essentially prohibiting the maximum charges from reflecting the increasing building and construction costs of providing infrastructure. The Sunshine Coast Council has conservatively estimated the impact of the State Government's decision not to index the maximum adopted charges as a cost to council of $1.5million annually.

- Conversely, the State Government currently applies a 3.5% annual indexation to its own fees and charges.

- Local governments are already subsidising the cost of providing development infrastructure, with recent consultancy work indicating that the current maximum capped charges provide only 69.9% revenue sufficiency of the cost of providing the infrastructure. This has the effect of transferring higher proportional costs from new development to the existing community to cater for new development infrastructure.

- *The LGAQ seeks amendments to legislation to immediately introduce an automatic annual indexation to the maximum adopted charges to reasonably reflect increasing infrastructure costs and remove the politicisation of this perennial issue.*

4.4. Restore the ability for councils to set conditions relating to trunk infrastructure

- The former State Government's legislative amendments in 2014 imposed much greater restrictions on councils in relation to when they can require trunk infrastructure to be constructed as a condition of a development approval. These amendments have effectively diminished councils' ability to apply trunk infrastructure conditions by increasing the requirement to demonstrate a nexus with the proposed development.

- The restrictive requirements are not only contrary to the definition of trunk infrastructure but are leading to unintended consequences when assessing development. This will not only lead to a lower quality of infrastructure provision in the short term but will, in the long term, also dissuade councils from approving development or simplifying the development assessment process via reduced levels of assessment with time-limiting decision-making rules.

- *The LGAQ seeks amendments to legislation to provide councils with the means to impose trunk infrastructure conditions where they are reasonable, rather than the current provisions, which only allow conditions to be imposed where the infrastructure is required by the development itself. The improved mediation processes through the Planning and Environment Court and Building and Development Dispute Resolution Committees will provide the necessary avenue to resolve related disputes.*

4.5. Provide equitable offset or refund requirements to ensure financial sustainability of councils

- The framework for offsets and refunds introduced by the former State Government in the 2014 amendments to the SPA are inequitable. Applicants now have the ability to apportion 100% of the trunk infrastructure costs to councils, (even where most of the infrastructure is necessary for the development), and councils are being forced to commit to offset and refund the full market cost of the infrastructure associated with new

development. This heavily benefits the developer, shifts their costs to councils and the community, and creates significant incentives for developers to exploit the system to maximise their access to councils' money. It also is likely to result in inefficient infrastructure delivery. These changes, in conjunction with the new conversion application process (outlined in section 4.6), are undermining local governments' ability to effectively program capital expenditure in the short and medium terms without risk of change and budget blow-outs. The major elements of the malfunctioning and inequitable offsets and refunds framework are discussed further below.

- The 2014 legislative amendments to the offset and refund provisions for the application of necessary trunk infrastructure conditions inside of the Priority Infrastructure Area (PIA) now requires the full cost of the infrastructure to be fully offset against the infrastructure charge and / or refunded, irrespective of whether the infrastructure will service other development. This is also in-light of the fact that the maximum infrastructure charges were set according to the estimated costs in the Priority Infrastructure Plans (PIPs) and similar policies prior to 2011 (which were conservatively low in many LGAs), yet the offsets are inequitably provided at the full commercial rates claimed by the developer.

- The 2014 legislative amendments also require that local governments provide a refund of the cost of the infrastructure, even though the local government has not received and has no plans to receive charges in relation to that item of infrastructure. This represents a significant financial risk and liability to local governments. Conversely, the State Government would not expose itself to this risk in the forward-planning and funding of its own infrastructure.

- The 2014 legislative amendments failed to duly consider that infrastructure plans supporting PIAs cannot anticipate all development options and sequencing. Further, they did not consider that councils have prepared their land-use plans with sufficient over-supply of capacity to enable development proposals to come forward, with the confidence that they would not be left to foot the bill for infrastructure to support the development proposals. This is particularly a problem in councils that have a high proportion of infill or brownfield redevelopment.

- *The new planning legislation must equitably apply necessary trunk infrastructure conditions inside the PIA. The LGAQ seeks amendments to legislation to clearly state that the local government must only offset the cost of the share of infrastructure that can be apportioned to users of premises other than the subject premises. This offset should only apply to infrastructure that has been, or is to be, the subject of a levied charge by the local government.*

- The 2014 legislative amendments also introduced the requirement that a charges notice must state "whether an offset or refund under this part applies". Calculated using the stated establishment cost, the offset or refund can be challenged by an applicant at any stage before the charges become payable. Given the broad timeframe for allowing for such a challenge to occur, any offset and/or refund will represent a contingent liability for councils until the charges are paid.

- Conversely, local government feedback suggests it may not be possible or practical for a council to determine the precise amount if the offset is to be based on actual costs in providing/constructing the infrastructure. As anticipated in previous submissions to the Department, experiences already suggest that mandating such a requirement is slowing down development approvals, particularly for larger developments, adding unnecessary additional 'red tape'. Even if the requirement to include this information in the ICN is removed (or becomes 'optional'), the process will continue to inhibit decision processes in development assessment due to councils still being required to pause and consider their financial position (and the significant liability for the cost of potentially any infrastructure required) to allow the development to proceed.

- *The LGAQ seeks amendments to legislation to:*
  i. allow councils to recalculate the establishment cost of trunk infrastructure needed to be provided; and

ii. ensure final completion costs are verified through a transparent and accountable process.

- The 2014 amendments also restricted that "a levied charge may only be for additional demand placed on trunk infrastructure that the development will generate". This change requires councils, when working out additional demand, to ignore the demand generated by uses that have been abandoned, provided that those uses were lawful at the time they were carried out.

- Councils have highlighted concern that there is no limit upon how far back the use was carried out in order for the additional demand to be ignored. This is particularly problematic regarding abandoned uses and amalgamated lots. These changes have already contributed to increasing both the administrative burden on councils and the number of disputes with applicants regarding evidence.

- In addition, it is likely that when the use was first carried out there was no requirement to pay charges or provide infrastructure. Accordingly, a local government has not had the benefit of receiving contributions or infrastructure required by the previous use. If the previous use occurred so long ago that there were no infrastructure requirements at all, the local government will miss out on the ability to recover those network costs on a new application.

- *To remove any doubt, reduce unnecessary disputes and maintain equity of existing use rights the LGAQ seeks amendments to legislation to state that credits will only be provided for a previous use that is no longer taking place where it is demonstrated that an infrastructure requirement that applies, or applied to, the use or development has been complied with.*

- The cumulative impacts of the offsets and refunds framework are already being felt by councils, particularly where large developments with substantial infrastructure require refunds, resulting in limiting councils ability to plan and budget appropriately and posing a genuine risk to councils' financial sustainability. The net effect is the potential making of a system that benefits only the larger developments (that typically build trunk infrastructure as part of the development) by drawing down the infrastructure charges revenue collected from all development that is meant to be spent on trunk infrastructure to benefit all network users.

4.6. Remove the unnecessary red-tape application process of converting trunk infrastructure conditions

- The 2014 amendments introduced by the former State Government introduced a conversion process that is confusing, ostensibly unnecessary and adds a duplicative layer of red-tape. The development assessment process already provides for these matters to be dealt with during the application stage or an applicant can seek amendments to conditions during the negotiated decision notice stage.

- The introduction of the conversion application process has led to an increase in the need for infrastructure agreements to remove / reduce the risk of these conversion requests being lodged in the future and to give councils certainty of offsets and refunds associated with a development approval. Infrastructure agreements are time-consuming and costly for both councils and applicants.

- The LGAQ is of the view that converting non-trunk infrastructure conditions to trunk should be limited to a decision by the relevant council and not be subject to further appeals relating to development that sits outside the accepted and legislated planning process. This position is based on the fact that the trunk infrastructure detailed in a PIP or LGIP has already undergone a full preparation, development and consultative process in accordance with statutory guidelines and approved by the State Government.

- The LGAQ seeks the removal of the conversion application process. All development applications should follow the standard development assessment process through representations made during the negotiation stage following the issue of decision notice.

4.7. Remove unnecessary LGIP transitional timeframes and 3rd party State Interest review process

- The requirement introduced by the former State Government in 2014 for all local governments to have an approved LGIP by 1 July 2016 is considered unreasonable and unlikely to be achieved by most local governments.

- The arbitrary 1 July 2016 timeframe is understood to be the 'stick' to encourage councils to formally amend their PIPs to LGIPs, however the timeframe does not consider the context in which councils have already developed their PIPs. Many councils have already undergone multiple State Interest reviews of their existing PIPs, including reviews by the Queensland Competition Authority. To now require local governments to 'jump through additional hoops' is particularly wasteful, considering councils must review their LGIPs within a 5-year timeframe. A reasonable approach would allow councils to continue having regard to their existing PIPs as LGIPs and for the State Government to support those councils without existing PIPs/LGIPs.

- In addition to delays associated with the March 2016 local government elections, councils anticipate additional red-tape caused by the State Government's new '3rd party appointed reviewer' requirement. Although not prescribed in the Bill, the LGAQ fundamentally disagrees with the additional requirement for a local government to engage an 'appointed reviewer' at its own cost to undertake LGIP compliance checks. The LGAQ maintains:
  - The State Government is unequivocally shifting the costs of a State Interest review onto local governments. The LGIP, like a PIP, is a key component of a planning scheme and has always been undertaken as part of the State Interest review function undertaken by the Department. All costs of a State Interest review must be borne, in principle, by the State Government. To require local governments to now pay for their own State Interest review is unreasonable and a cost shift to councils and their local communities.
  - Further, to allow a local government's consultant to also be an Appointed Reviewer, but not an experienced local government officer, is unreservedly incongruous.
  - No other local government instrument requires such a review that may cost council between $19,000 to $35,000 (conservative range for a medium size LGIP).

- *The LGAQ seeks the removal of the onerous '3rd party appointed reviewer' requirement and seeks amendments to legislation to remove the 1 July 2016 deadline. In addition, the State Government should work with each local government to agree to a transitional timeframe (having regard to the 5 year mandatory LGIP review timeframe) that reflects each council's unique circumstances, including planning scheme drafting status and financial considerations.*

- In addition, it is counter-productive to ask councils to publish detailed information about their financial forecasts (revenue and expenditure) through a mandated 'schedule of works model'. While this information may be of some use to the State Government and 3rd party reviewers, it places a great deal of unnecessary pressure on the statutory adoption, development assessment and appeals processes. The LGAQ seeks the removal of the requirement that this information be published at any stage.

4.8. Improve Community Infrastructure Designation processes, including for local government

- Although the LGAQ has welcomed the intention to contemporise the Community Infrastructure Designation process, there remains fundamental concern from local government that the new process will continue to have inadequate regard to local planning, infrastructure and community matters. Historically, the lack of transparency, poor formal engagement practices and local government interests not being adequately considered has led to cumulative impacts and unintended consequences, particularly on local infrastructure. Often these impacts and consequences cannot be easily resolved and result in issues that are expensive to rectify, such as road capacity and intersection failures, inadequate onsite parking, passenger set down areas and public safety issues.

- Nonetheless, the LGAQ notes the proposed Infrastructure Designation (formerly known as Community Infrastructure Designation) process in the lapsed P&D Bill is not restricted to publicly-owned infrastructure and now explicitly refers to privately-owned infrastructure proposals in-line with Schedule 3 of the draft Regulation. This represented a significant policy shift by the former State Government that could have significant cost and resource implications for local government and broader cumulative impacts on local communities and local infrastructure. For example, extending infrastructure designations of high impact uses more broadly to private schools, private aged care facilities and private sports and leisure facilities removes due consideration by the community (including 3rd party appeal rights) and compliance with relevant local planning instruments (i.e. council cannot apply necessary conditions of approval or levy infrastructure charges).

- The LGAQ does not support the proposed Community Infrastructure Designation process in its current form, particularly its extension to privately-owned infrastructure, and seeks further comprehensive and focused consultation be undertaken by the State Government prior to its reintroduction. The forfeited infrastructure charges revenue alone is an indisputable cost shift onto councils and their local communities. Examples of the cost impacts of recent development approvals in South-East Queensland involving privately owned / commercially operated facilities include:

  Example 1 – Material Change of Use (MCU) for an Aged Care Facility consisting of a 108 rooms – Infrastructure Charges Payable – $916,296.00

  Example 2 – Material Change of Use (MCU) for an existing Education Establishment to be extended over 3 levels – Infrastructure Charges Payable – $275,250.00

- *The LGAQ recommends a formal partnership approach be developed between the State Government and local government where councils are not simply considered as another stakeholder. Such an approach must include statutory requirements that do not wholly rely on the good will of both parties. The LGAQ recommends that such a process would, at a minimum, culminate in local government being provided a statutory role similar to that of a referral agency.*

4.9. Review the proposed definition of "use" to protect community rights and to avoid having to make unnecessary amendments to existing planning schemes

- Case law on the SPA definition of 'use' makes it clear that secondary uses forming part of a primary use must not only be incidental, but also necessarily associated such that it would be impossible for the primary use to be carried out in the absence of the incidental use. The definition proposed in the lapsed P&D Bill related to 'use' fundamentally expands the activities that may be carried out because secondary activities need not be necessarily associated with the primary use to be considered part of that use and as a result, lawful. While the flexibility of including broader activities as part of a use may be beneficial in certain circumstances, the LGAQ suggests that the regulation and enforcement of activities that were not contemplated as part of a development approval (although ancillary) may prove problematic for councils and undermine local communities' understanding of the development process.

- *The LGAQ seeks the retention of the current SPA definition to maintain certainty to both the public and local governments when considering development applications.*

- In any event, the QPP already contemplates the concept of ancillary uses in the mandatory suite of defined uses. The table of defined uses clearly identifies ancillary uses that may form part of a use, as well as those that may not. The proposed broader definition of 'use' conflicts with these provisions, meaning amendments to existing QPP planning schemes would have to be made in order to address this inconsistency.

- As evidenced in the recent decision in *Witmack Industrial Pty Ltd v Toowoomba Regional Council* [2015] QPEC 007, disputes about what constitutes an 'ancillary use' still exist. If the broader definition were to be introduced, such disputes would only be exacerbated.

4.10. Review the need to retain core planning process in principal legislation to provide confidence and transparency

- The lapsed P&D Bill and the State Government's Directions Paper propose to remove *processes like the development assessment process to a statutory instrument and improve them for more practical processing and better navigability*.

- Although the rationale to improve processing and navigability is understood, removing the need for due process for fundamental legislative amendments does not provide certainty for the end-user nor instil confidence that changes will not continually occur. It is arguable this places excessive power in the Minister's hands, particularly regarding the drafting and potential amendments to the proposed 'Minister's Rules'. The LGAQ endorses the new State Government's commitment to transparency.

  > *As part of the Queensland Labor's commitment to transparency, if it is elected to office it will review the Planning and development Bill to ensure that it does not place undue power in the hands of the Planning Minister.*

- The development assessment process is a core component of planning legislation. While legislation must be navigable, the previously proposed system was mapped across several instruments that may have confused all end users. *Given the potential negative outcomes for local governments, industry and the broader community, the LGAQ recommends that key process matters (including the development assessment process) should not be moved from the principal legislation and into subordinate legislation.*

- *Notwithstanding the above, the LGAQ recommends the framework is located in one statutory instrument and ensures genuine review processes cannot be expedited without due consultation and engagement.*

4.11. Improve the existing compensation provisions for planning scheme changes managing risks associated with natural hazards

- The proposed provisions in the lapsed P&D Bill failed to address the issue identified as part of the *Queensland Floods Commission of Inquiry Final Report* dated March 2012 (pages 98-99,128-132) where the existing provisions of the SPA were identified by councils as a deterrent to the inclusion of flood controls in local planning instruments.

- The lapsed P&D Bill proposal required that, had development happened, it would have resulted in "significant risk" that could not have been "substantially reduced" by development conditions.

- The underlying concern remains for local government that, should a change be made to a planning scheme to address risk associated with a natural hazard, there will always be room for a potential claimant to argue that a condition of approval could have been imposed to remove the risk. Such hypothetical arguments give councils little or no certainty that they will be exempt from paying compensation upon amendments to a local planning instrument.

- Conversely, councils are also concerned that if they decide not to change a planning scheme and instead rely upon conditions of approval to mitigate the impact of a natural hazard, such conditions can be challenged on appeal. Given that conditions of this nature are intended to 'substantially' reduce the impact of the hazard, which in turn may significantly constrain development, there is a real risk that they can be found to be invalid by the Planning and Environment Court. This is due to being what is arguably an 'unreasonable imposition' on the development, leaving councils with no unhindered means of addressing the impact of the hazard on development.

- The LGAQ Policy Statement, which is the definitive statement of the collective voice of local government in Queensland, states:

  > *6.1.1.11 Local government opposes the extent of the compensation provisions in current planning legislation, and only supports limited provisions for compensation based upon certain criteria being met before councils*

would be liable. Compensation rights should only be preserved where an applicant can establish that they have suffered an immediate and demonstrable loss, and claims for compensation should be eliminated where there is no substantive restriction on continuing use of the land for existing lawful purposes and where the only loss is loss of the speculative possibility of future development for some other purpose.

6.1.1.12 Compensation should not be available where local planning instruments are made or amended to manage risks associated with natural hazards, including flood, bushfire, landslide, storm tide inundation and coastal erosion.

- Notwithstanding, the alternative paragraphs identified for section 25(4)(e)(i) in the consultation draft P&D Bill required the change be made to "reduce the risk … in good faith, having regard to an assessment of the risk to the persons or property carried out by a person appropriately qualified". These provisions predominantly addressed the concerns identified by councils in the Queensland Floods Commission of Inquiry. The LGAQ understands these provisions were broadly supported by numerous stakeholders in the consultation process, including representatives of the legal and planning profession. However, no rationale has been provided as to why the alternative wording proposed in the consultation draft P&D Bill was not adopted in the lapsed P&D Bill.

- *The LGAQ seeks amendments to legislation to remove compensation provisions where local planning instruments are made or amended to manage risks associated with natural hazards.*

5. PROPOSED LOCAL GOVERNMENT REFORMS

In addition to the above, local governments recommend the State Government also pursue the following proactive planning reforms in either the new planning legislation or as part of the broader *Better Planning For Queensland* agenda:

- Reviewing housing regulation and the relationship with local planning instruments to remove unnecessary complexity associated with building a house as cited in previous local government submissions to the department

- Providing the Planning and Environment Court criminal jurisdiction to promote efficiencies, including not having to prosecute a criminal matter in the Magistrates Court while having to deal with the civil matter in the Planning and Environment Court

- Reviewing the scope, function and governance of regional plans, particularly the SEQ Regional Plan and associated infrastructure planning and collaborative (State / local government) decision-making

- Rationalising and improving the steps involved in compliance and enforcement processes to encourage the utilisation of self-assessable development provisions in local planning instruments (and efficient enforcement)

- Introduction of an incentives-based approach for planning and development performance in local government; ensuring progressive councils have access to funding and/or reward programs that encourage continuous improvement and high levels of service delivery

- Improving provisions for Preliminary Approvals overriding or affecting local planning instruments in relation to currency periods and alignment with current planning instruments

- Review legislative development assessment rules and timeframes, where appropriate, to promote efficiencies for certain low risk development types and levels of assessment

- Remove the proposed ability for applicants to 'opt-out' of information requests which adds complexity to the development assessment process with no demonstrable proactive value

- Continued investment in leading practice initiatives by the State Government, local government and industry; including capacity building and development of practical guidance materials and tools

- Review and refinement of the SARA to ensure the quality and consistency of State Government outputs across Queensland

- Refinement of the single SPP and engagement with local governments in its review to ensure seamless integration; including improving how local governments are engaged in the review of State mapping

- Review the role and scope of the QPPs, acknowledging the benefit of achieving uniformity across certain aspects of Queensland's local planning instruments

- Review the 2014 amendments to the *Environmental Offsets Act 2014* that have restricted local governments' ability to apply conditions to development impacting Matters of Local Environmental Significance as identified by local communities

- Comprehensive review of the inter-relationship of local planning instruments with building provisions, with the aim of reducing regulatory duplication and conflicts

- Fundamentally reviewing and refining the statutory process for making or amending local planning instruments to ensure the process is transparent and expeditious and that local planning instruments are relevant for the priorities of the community

- Improve the proposed provisions for Extension Applications; including removing the ability for a developer to continue to act upon an approval while a local government's decision about an extension application is being appealed

- Invest in new and emerging technologies to support business process efficiencies where appropriate systems are in place as well as access to comprehensive, accurate and timely development and planning information.

LOCAL GOVERNMENT ASSOCIATION OF QUEENSLAND

26 February 2016

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

Dear Sir/Madam

Supplementary Submission on Planning Bills 2015

In appearing as a witness before the Parliamentary Committee on 26 February 2016, the LGAQ has been asked to respond to the following question:

> *"In their submission, (No.72) the Crime and Corruption Commission has raised concerns that 'Local governments are vulnerable to corrupt conduct due to the diverse functions they undertake, the substantial amounts of money involved in their functions, and the considerable authority and decision-making powers their employees possess' (Sub 72 Pg. 1). Do you believe that planning related corruption is an issue for Council and what steps are taken to reduce potential risks? In particular with regards to the following:*
>
> - *what constitutes 'minor or inconsequential' effects of a development when determining whether an exemption certificate applies (Section 46(3)(b)(i) PB; s. 41(3)(b)(i) PDB)*
> - *removing an appropriately qualified person from an alternative assessment managers list (Section 48 PB; s. 43 PDB)*
> - *whether the creation of an alternative assessment managers list is limited to code/standard assessments (Both sets of Explanatory Notes (PB, p. 59; PDB, p. 50) state 'impact merit assessment ... is more appropriately undertaken by a directly accountable body such as a local government')*
> - *negotiating the required fee with an applicant (For a chosen assessment manager. See 'required fee' in schedule 2 PB & PDB)*
> - *how consent of the owner must be given (Section 51(2) PB; s. 46(2) PDB.)"*

LGAQ Response

General observations

1. The LGAQ does not believe that planning related corruption is an issue for councils in Queensland. Indeed, while the Crime and Corruption Commission may receive a number of allegations about local government each year that are development specific, the LGAQ is not aware of any arrests, charges or recommendations for disciplinary action relating to local government in recent times. Although there will always be a risk, there are existing preventative measures and safeguards in place to help ensure that corruption does not materialise.

Existing preventative measures

2. Importantly, it is a requirement for all councillors in Queensland under the *Local Government Act 2009* and *City of Brisbane Act 2010* to declare any "material personal interest" he or she has in a matter

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and to refrain from discussing or voting on the matter. It is an offence to do otherwise, with a maximum punishment of two years imprisonment.

3. Similarly, there are obligations on all councillors with respect to any "conflict of interest" in a matter, real or perceived, which must be declared at a meeting and dealt with in an appropriate way.

4. In relation to the delegation of decision-making to council officers, while there may be some concern about the concentration of decision-making power with employees, what occurs in practice for many larger councils is that delegations are given to an assessment officer to coordinate the technical assessment of a development application by the relevant council specialists (e.g. engineers, ecologists and architects) who in turn use the planning scheme to provide recommendations to the delegate or council. As such, any concentration of power is in reality distributed among officers with the relevant expertise in particular fields. For smaller councils, such delegations are often not given at all.

5. The conduct and performance of councillors is also the subject of regulation under the *Local Government Act 2009* and *City of Brisbane Act 2010*, as is the conduct of local government employees, which includes recourse to disciplinary action and reviews by external parties.

Existing safeguards

6. Most importantly, administrative decisions by councils in Queensland are generally reviewable under the *Judicial Review Act 1991*. For planning specific matters, the current regime also allows for:
    a. a merits review of decisions by councils by way of appeals to the Planning and Environment Court;
    b. a review of decisions or other actions done, to be done or that should have been done by councils for the purposes of the *Sustainable Planning Act 2009* by way of declaratory proceedings before the Planning and Environment Court; and
    c. the Queensland Ombudsman to investigate complaints about councils and their employees, and to help improve their decision-making and administrative practice.

7. The proposed planning bills do not alter the preventative measures under the *Local Government Act 2009* and the *City of Brisbane Act 2010*, and retain the existing safeguards. Balanced discretion is an inherent virtue in planning and development systems. Without it, planning schemes would be unwieldy and statutory processes would be untenable.

Exemption certificates

8. A local government may give an exemption certificate for development only if it is satisfied that, among other things, the effects of the development would be minor or inconsequential considering the circumstances under which the development was categorised as assessable development.

9. This is a matter to be done for the purposes of the Planning Bill and will be reviewable by the Planning and Environment Court under clause 11(1)(a) of the Planning and Environment Court Bill. If the court is not satisfied a decision is lawful, the appropriate declarations and orders may be made by the court.

10. Alternatively, the matter could be the subject of a complaint to the Queensland Ombudsman, whereby the matter would be reviewed and subject to recommendations.

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Removing appropriately qualified persons from an assessment manager's list

11. Likewise, the keeping of a list by a council as assessment manager is a matter done or to be done for the purposes of the Planning Bill.

12. Again, such a matter could be reviewable by the Planning and Environment Court under clause 11(1)(a) of the Planning and Environment Court Bill or, alternatively, the subject of a complaint to the Queensland Ombudsman.

Level of assessment for alternative assessment manager applications

13. In identifying the concept of an alternative assessment manager in clause 48((3) of the Planning Bill, the provision refers only to "development that requires code assessment" and provides that the local government may keep a list of persons appropriately qualified to be an assessment manager "in relation to that development".

14. The provision then states that the alternative assessment manager is the assessment manager where someone makes a development application "in relation to only that development".

15. As such, LGAQ is of the view that the creation of an alternative assessment managers list will be limited to code assessable development. In addition, it is only envisaged that councils would use alternative assessment managers for lower risk development applications, such as that for low risk operational work. In any event, it is also noted that using alternative assessment managers may not be practical or feasible for all councils in Queensland.

Negotiated fees between an applicant and chosen assessment manager

16. The negotiation and payment of a required fee is a matter done or to be done for the purposes of the Planning Bill.

17. Such a matter would be reviewable by the Planning and Environment Court under clause 11(1)(a) of the Planning and Environment Court Bill. The matter could also be the subject of a complaint to the Queensland Ombudsman if it were to involve a public agency.

Owner's consent

18. Clause 51(2) of the Planning Bill requires "evidence of" consent of the owner for a development application. The current requirement in the *Sustainable Planning Act 2009* is for either "written consent" of the owner or a "declaration" by the applicant that the owner has provided consent. Both constitute evidence of consent already.

19. As such, the concept of owner's consent under the Planning Bill will be substantially the same and well understood.

20. In any event, such a matter can be the subject of either a merits appeal or a declaration proceeding before the Planning and Environment Court. Alternatively, it could be the subject of a complaint to the Queensland Ombudsman.

21. Given the above, LGAQ does not believe there is, or will be, any unacceptable risk of planning related corruption by councils.

LGAQ
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Please feel free to contact myself or Mr Luke Hannan, Manager – Planning, Development and Natural Environment on (07) 3000 2226 / luke_hannan@lgaq.asn.au to discuss the matters contained in this supplementary submission further.

Yours sincerely

Greg Hoffman PSM
GENERAL MANAGER – ADVOCACY

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