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

Dear Sir or Madam

Re: Submission on the Planning Bill 2015

Thank you for the opportunity to provide a submission on the Planning Bill 2015.

The Bundaberg Regional Council is supportive of the ongoing Government reforms to help improve the planning and development framework in Queensland. In response to the consultation material provided the Council would like to provide the following comments for your consideration. For assistance, the Council's comments are broken into three sections – changes supported, changes not supported, and matters that could be supported given further changes.

Changes that are supported

1. The changes proposed for Temporary Local Planning Instruments, including the extended two year period and the ability to amend them will provide Council with much more scope to implement interim planning solutions whilst longer term solutions can be developed and ultimately incorporated into planning schemes where appropriate.

2. The simplification of state instruments into two broad categories.

3. The changes to the definition of minor change, notably the removal of the requirements about the likelihood that the change would result in a public submission, are a sensible change. Such test always involved a subjective assessment by the Council (and other assessment manager's) that was difficult to quantify and lead to some undesirable outcomes, particularly relating to very minor changes to contentious developments.

4. Removal of the roll on provisions for currency periods will make these provisions much easier to understand for the public and development industry, and will remove an area of much contention.

5. The refinement of conditioning powers for the provision of necessary (trunk) infrastructure.

6. The extension of the timeframes (subject to Ministerial approval) relating to the provision of the LGIP are welcomed as allowing a realistic timeframe for Council to undertake this work.

7. The increase in penalties for development offences will provide additional assistance to Council in taking necessary enforcement action.

8. The removal of the court rules to their own act have helped to reduce the length of the draft Bill.

Changes that are not supported

1. Whilst it is generally acknowledged that Compliance Assessment was not an effective tool for reducing the level of assessment for development, the structure provided for the assessment of documents associated with approvals, including subdivision plans, was very useful and helped to regulate what was previously a very ad-hoc process.

   Although the Draft Planning Regulation currently available for public consultation provides a process, it lacks the robust framework that currently exists, especially around time frames, Action Notices and decision rules. Concern is also expressed that by being in the regulation, there exists a greater potential to regularly change the process without consultation. The Council supports the retention of the existing compliance assessment system within the primary legislation on this basis. In the alternative, the system provided in the Draft Regulation should be made much more thorough and rules around decision making made clearer.

2. The expansion of the infrastructure designations to private infrastructure, such as schools and aged care facilities, has the potential to have massive impacts on the planning powers of the Council, especially as Council has no statutory role in the designation process beyond that of a submitter, to be treated the same as any other party. Often these developments have substantial planning and infrastructure impacts that should and must be properly considered and managed through a development assessment process.

   In addition, such uses generate significant demands on Council's trunk infrastructure network. Without the ability to collect infrastructure charges on these developments, and when compounded with the current infrastructure charging framework, Council's financial sustainability will be severely impacted to the point that Council may no longer be able to fund its own trunk infrastructure program unless other services or non-trunk infrastructure programs are seriously curtailed.

3. The Bill and associated draft MALPI do not seem to significantly change the existing process for making and amending local planning instruments, although the additional flexibility about agreeing to an alternate process is acknowledged. Having just adopted a new SPA compliant planning scheme that took five (5) years to complete, the Council fully appreciates the difficulties that the current system presents to Councils in preparing and implementing local planning instruments. If the planning system is to become more flexible and responsive to industry and community concerns and interests, then there

needs to be fundamental change to the way that local planning instruments are implemented. The length of time necessary to implement even minor changes is a significant impediment to addressing issues and facilitating development.

Effective planning schemes with clear visions that regulate only where necessary and provide clear guidance to the community and development industry should be the primary focus of both State and local government. However, five years and over $1.5 million to produce a planning scheme is a burden that local governments should not have to bare and is a sign that the current system is flawed. The Bundaberg Regional Council would welcome the opportunity to discuss with the Government and other stakeholders how this fundamental part of the planning system can be overhauled to achieve meaningful reform.

4. The current arrangement where the development assessment system is effectively split across the Bill, the regulation and the DA Rules will lead, in Council's view, to confusion and lack of understanding of the process. It is not clear as to why some elements are included in the Act and others not. The current IDAS system under SPA provides a logical, sequential system largely in the one document (albeit with some technical detail in the regulation). It is doubtful that any average person, let alone those with development industry experience, will be able to piece together the various elements of the system contained in different documents to obtain a clear understanding of the requirements they may face should they wish to undertake development. The Council supports the consolidation of the development assessment provisions in the one location, preferably within the Bill. In this way the DA rules will not be subject to change (potentially constant) without the State undertaking an appropriate consultation process with stakeholders including the Council.

5. Regardless of where the development assessment provisions ultimately reside, the Council reiterates its opposition to the wholesale replacement of the existing IDAS system. It remains Council's position that the existing system contained in the *Sustainable Planning Act 2009* is not fundamentally flawed and can operate effectively to deliver good and timely planning outcomes. Council has invested heavily in the last two years to improve its own internal DA systems and this work, which has taken advantage of the tools provided as part of the DA Innovation Project to which the State was a partner, is delivering real benefits to Council and the local development industry.

   There is nothing in the new system that would indicate that it will lead to any better outcomes than are currently being achieved. It is Council's view that the changes to existing Chapter 6 under SPA are unnecessary and that the State has not provided any compelling argument for the changes proposed, both within the Bill but also in the DA Rules. The cumulative impact of the changes proposed, such as opt out of information request clauses, reduced timeframes and tighter decision rules is likely to force Council into refusing more applications than it currently does, as the proposed system removes significant opportunities for Council and applicants to discuss and negotiate over issues that might exist with their applications.

Further, it is noted that many Councils including the Bundaberg Regional Council have only just adopted a SPA compliant Planning Scheme. It is considered that insufficient time has been given to observe and evaluate how the current system operates with planning schemes that are properly drafted to take advantage of the current provisions in SPA.

It is understood that the changes proposed are aimed fundamentally at changing the culture of planning departments in local governments across the state. Instead of the heavy handed implementation of regressive measures, the Council suggests that instead the State look to develop a mentoring and capacity building program lead by the Department of Infrastructure, Local Government and Planning that can work with local government to address cultural and procedural issues that might exist in their organisations. By adopting a more collaborative approach to making improvements in the operation of the current system the State is much more likely to have buy in from Councils and see real change for the improvement of development assessment in Queensland.

6. Whilst the Council acknowledges and supports the indexation to the maximum charge contained in section 111 of the Bill, it is still the Council's view that the infrastructure charging framework provided in Chapter 4 is fundamentally flawed, is inequitable and skewed too far to the benefit of developers. The nett effect of the current provisions is having a significant impact on Council's financial sustainability and has led to the Council seriously considering options such as under provision of infrastructure and refusals as a way of maintaining a level of support for development that would otherwise bring benefits to our region. The Council understands that the LGAQ will be making a detailed submission about these matters and the Council fully supports their position. Without going into the same level of detail as that submission, the Council believes that the charging framework should be changed as follows:

    a. The conversion application process should be removed entirely. Applicants can negotiate what constitutes trunk infrastructure as part of the negotiated decision notice process;
    b. Only the cost of trunk infrastructure attributable to other users should be offset against the charges; and
    c. The requirement for third party review of the LGIP should be removed or alternatively should be managed and paid for by the State.

7. The Council acknowledges the improvements made to the compensation provisions relating to changes made to local planning instruments to respond to natural hazards. However, it is still considered that there is insufficient protection for Council should it wish to make a change to appropriately respond to these hazards. The introduction of a further test on such changes under section 30(5) introduces yet another process for Council to follow when drafting a planning scheme which will require more time and resources to address, when planning scheme preparation is already onerous in both time taken and cost to Council. The requirement to prepare a report under this section should be deleted, especially when considering that natural hazard provisions are already subject to detailed review by the Department.

8. The Council does not support the new requirements of section 63(4). Whilst the principle behind the concept of a reasons of decision notice is understood, in practice this notice will be an unnecessary duplication and a drain on Council resources. For complying code assessable development, given the presumption of approval under the decision rules what benefit would arise from such a notice? For simple applications that fully (or nearly so) comply the scheme requirements (including the acceptable solutions) why would it be necessary to publish a notice giving reasons for approving something clearly envisaged by the planning scheme and consistent with the community's expectations. And in such circumstances, even though the fact sheet states that it will not be sufficient to simply say the development complies with the Assessment Benchmarks, what else is there to say?

   For the vast majority of applications it is considered that these provisions will add very little benefit and will instead be seen as an extra level of paperwork and an exercise in Councils justifying their existence by residents who instead simply want to see their local government get on with the job.

   The current arrangements where decision notices are required to identify whether the assessment manager's decision conflicts with a planning instrument and the reasons for approval despite the conflict, or reasons for refusal, are considered sufficient to provide for transparent decision making. Also, there are already requirements to provide information about applications received and decided on Council's website that keeps residents and others informed as to development activity. To go to the extent that is suggested by the Bill will only have the effect of increasing the amount of reporting required and hence time taken to assess applications. If the reasons for a decision are deemed absolutely necessary, then the inclusion of an additional section in the Decision Notice rather than producing and publishing a separate document will help to cut down on unnecessary duplication of administration work.

Changes that need further work

1. It is noted that Ministerial approval is still required for TLPI's before the take effect. Given that TLPIs are intended to address urgent matters for which there exists a significant risk of a serious adverse outcome, we believe that the State should adopt a greater appetite for risk and remove this requirement (on the proviso that the Council satisfies itself that no state interest is involved or adversely affected) to allow the TLPI to take affect from the commencement date stipulated by the Council. In the alternative the TLPI have effect from the date it is adopted by the Council but would need to be confirmed by the Minister. If at the time of the review the Minister declines to consent to the making of the TLPI, it would then cease to operate. Such period between the Council resolution and Ministerial sign off would not be a long period and therefore any impact of a TLPI not ultimately accepted would be minimal.

2. The decision rules for impact assessment and also some change applications introduce the concept of a "relevant matter". It is not clear if this is an intentional inclusion to overcome the loss from the decision rules in s 326 of SPA that a decision can only conflict with a relevant instrument if there are sufficient grounds to justify the decision, despite the conflict. Whilst on the surface of things it would appear such change opens up Council's discretion about deciding impact assessable applications, it is the Council's view that the loss of the test under s326 will result in a less transparent and accountable planning system. Further, the concept of any relevant matter, despite the guidance provided in the draft Bill, is one that is likely to attract substantial debate as to what is and isn't a relevant matter and could well be subject to extensive challenge in the Court. The Council's preference, as stated elsewhere in this submission, is to retain the existing decision rules and assessment system with minor tweaks to improve its operation.

3. Given the changes to Code Assessment it will be necessary for Council to undertake urgent and significant amendments to its planning scheme, most notably the codes, to enable it to operate adequately. Such process is likely to take some time in the drafting and subsequent amendment process under the MALPI. Such changes are likely to go well beyond merely changing levels of assessment in the table of development, unless it is the State's intent to drive all development that is code assessable under SPA to impact assessment (which we think is unlikely). We believe that the State should provide as a matter of priority a service to assist Council's review their schemes for soundness of operation under any new DA system and support, both financially and through fast tracking the amendment process, any required amendments to the planning scheme prior to the commencement of the Act. We think that, given our past experience, such amendment process will take at a minimum 12 months to complete and could well be much longer unless genuine support and assistance is provided.

I trust that you will find our submission useful in your deliberations. If you require any further information regarding the Council's submission, please contact me on 1300 883 699.

Yours faithfully

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