Submission No. 102
11.1.13

City of Ipswich

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

Email: ipnrc@parliament.qld.gov.au

18 January 2015

Dear Sir/Madam

Re: Submission on The Planning Bill 2015 and The Planning and Environment Court Bill

Ipswich City Council (ICC) welcomes the opportunity to make a submission to the Infrastructure, Planning and Natural Resources Committee in response to:

- The Draft Planning Bill; and
- The Draft Planning and Environment Court Bill.

In general, ICC is supportive of the reform proposed as a result of the Bills and appreciates that a number of amendments have been made to the drafts in response to previous comments provided by ICC and others.

Please find attached a detailed list of comments in response to the Bills listed above. The key items of importance are summarised below.

1. Maximum Charges

The current draft states that the minister may change the amount of a maximum adopted charge and how the amount of any increase is to be calculated. Whether to apply an increase to the maximum adopted charge is therefore discretionary which introduces uncertainty for local government from a financial sustainability perspective. Provision should be made for an automatic indexation of the maximum adopted charge to be applied on an annual basis at a particular time of the financial year to provide certainty.

2. Conditions Drafting

Non-trunk Infrastructure

The collection of contributions for non-trunk infrastructure should be permitted so long as there is a nexus between the development and the construction of such infrastructure. In many cases this can improve the viability of development proposals as well as generate a better community outcome. The opportunity exists for local government to collect non-trunk infrastructure contributions and thereby pool funds to also assist other development in the vicinity of the site. This could be guided by Government Policy to ensure consistent application.

Trunk Infrastructure

The requirement for development and the conditions of approval of such development to have a nexus to trunk infrastructure for an Assessment Manager to be able to condition the construction of such trunk infrastructure is problematic.

The developer, the Assessment Manager and the community may be subject to increased costs resulting from the construction of redundant or ineffective infrastructure. Consideration of the broader delivery of trunk infrastructure is often required, and the opportunity for cost savings in delivering adjacent trunk infrastructure with development work should not be discounted. As an example, at the same time as undertaking minimal frontage works a developer may be able to deliver part or all of the necessary trunk external infrastructure for a locality.

It is recommended that the tests for trunk infrastructure conditions be reconsidered to ensure that there is adequate flexibility for Local Governments to require the delivery of trunk infrastructure with development. Importantly, the Bill includes a range of provisions which protect the developer from the burden of costs associated with works above and beyond the scope of the development. Furthermore, the effect of the Bill ensures that financial sustainability is considered in making a decision to require a development to construct trunk infrastructure, especially where trunk infrastructure costs are greater than the levied charge associated with the development.

Finally, in considering the application of offsets, offsets should be based on the lesser of planned and actual costs. The burden associated with all projects being based upon planned costs does not promote a competitive tendering process for works, minimisation of costs for trunk works undertaken by developers, nor does it provide any support for undertaking amendments to planned costs to reflect actual costs. In addition, the Infrastructure system is predicated on the apportionment of costs to development based on planned costs alone. This comes at a significant risk to the community of increased infrastructure costs (which may not be recoverable).

3. Conversion Applications

The LGIP establishes and defines what constitutes trunk infrastructure through a prescribed process that requires amongst other matters compliance reviews by an independent reviewer relative to state government guidance, with the process to be used

and the content of the LGIP prescribed by statutory guidelines. Pursuant to the statutory guidelines the trunk infrastructure networks are determined in the LGIP through a comprehensive modelling, planning and review process that is subject to approval by the State government. The introduction of provisions to allow the conversion of non-trunk infrastructure to trunk infrastructure has introduced unnecessary uncertainty (particularly in regards to offsets and refunds and the overall financial sustainability of the trunk infrastructure networks' delivery), confusion and has the effect of allowing for challenge to the trunk infrastructure networks as set out in the LGIP. It is considered that the matters relating to non-trunk and trunk infrastructure can be adequately, appropriately and more efficiently addressed in the development assessment process. Accordingly it is recommended that the provisions relating to the making of conversions applications be removed from the Bill.

4. Making a Superseded Planning Scheme Request

Applicants should be required to provide a detailed description of the proposal the subject of the request including conceptual plans. This is critical to ensure that the assessment manager is completely aware of the nature of the development. It is also critical to ensuring any relevant superseded planning scheme application is actually consistent with the initial request.

5. Compensation

Where there is a planning scheme amendment in response to a natural hazard, there is a significant body of work undertaken by Local Governments in the preparation of the supporting material to substantiate such a change. This process and the associated information are also subject to State Interests Review and Ministerial Approval. Accordingly, there should be no opportunity for compensation associated with such changes. The current wording of the legislation leaves this opportunity open.

6. Assessment Categories

The retention of the terms Code Assessment and Impact Assessment is fully supported.

7. Community Infrastructure Designations

All designations should be subject to the levying of infrastructure contributions where the designation results in an increase in demand for the relevant infrastructure. Furthermore, the use of community infrastructure designations should not extend beyond government agencies.

It is further recommended that the decision rules for consultation and state interest review for any proposed designation must consider the representations of local government and that designations provide for the ability to apply conditions of approval consistent with the requirement of *The Planning Bill*.

8. Jurisdiction of Courts and Tribunals

The Bill, Courts Bill and Regulations remain unclear as to which jurisdiction is to deal with particular matters. These responsibilities and matters should be made clear. It is further recommended that a central registrar be utilised to assist in determining the appropriate jurisdiction for each case.

In addition, consideration should be given to the ability for the Chief Executive of a Tribunal to refer matters to another jurisdiction. At present, the provisions only permit the reforming of another tribunal. Similarly, the registrar of the P&E Court should have jurisdiction to refer matters to a tribunal where the matter may be better resolved in that jurisdiction.

9. Preparation of an LGIP

Many local governments have already included a PIP or LGIP in their planning schemes that were prepared under the relevant statutory process and to meet the requirements relating to content at the time. These remain fit for purpose in the context of the operation of the maximum charges regime and having a nexus with the current planning schemes. The requirement for a local government to replace its current LGIP (i.e. where it already has a LGIP) with a new LGIP by a prescribed date, and with the penalty of it not being able to levy charges or impose conditions for trunk infrastructure is unreasonable. It is recommended that this requirement be removed from the Bill, or at least confined to have effect on those Local Governments that may not have an adopted LGIP. New LGIPs should be prepared as part of new planning schemes.

Thank you for the opportunity to make this submission. If you would like to discuss any of the matters further please do not hesitate to contact

Yours faithfully

John Adams
CITY PLANNER

Attachments	
1. Draft Planning Bill 2015	Attachment 1
2. Draft Planning and Environment Court Bill 2015	Attachment 2

ATTACHMENTS
TO
SUBMISSION NO. 102

Draft Planning Bill 2015

Ipswich City Council Feedback

Description	Feedback Comments
Chapter 1 - Preliminary	**Section 3 Purpose of the Act:** Subsection (1) states that: *(1) The purpose of this Act is to facilitate ecologically sustainable development that balances—* *(a) the protection of ecological processes and natural systems at local, regional, State, and wider levels; and* *(b) economic growth; and* *(c) the maintenance of the cultural, economic, physical and social wellbeing of people and communities.* There is a clear change in emphasis in the Introduction and Purpose of the Bill from facilitating Queensland's prosperity (in the Planning and Development Bill) to facilitating ecologically sustainable development. This change in emphasis to sustainable development is supported. **Subsection (5):** the inclusion of this section ie Advancing the purpose of the Act' is supported.
Chapter 2 - Planning	**Section 14**: It is recommended that as with SPA (Division 3 Subsection 41(5)(c)) that in the process of establishing regional planning committees the Minister *'(c) consult with the local governments and interest groups the Minister considers appropriate about—* *(i) the draft terms of reference, including the term of the proposed committee; and* *(ii) the membership of the proposed committee; and* *(iii) the extent of their, the Commonwealth's and the State's, proposed participation in and support for, the proposed committee.'* **Section 18:** Subsection 17(3)(a) the provision states: *'(a) must give a notice about the process for making or amending the planning scheme to the local government;'* **Section 19:** Subsection 18(2) provides: *'Instead of complying with section 18, a local government may amend a planning scheme by following the process in the rules.'* **Overall Comments for Sections 16-19:** The sections make reference to a 'local government'. It is unclear whether the reference to a local government means the Council and therefore the actions need to be undertaken by resolution of Council or whether actions can be undertaken by delegation where the delegation has been given to an officer. For example, it may be beneficial in terms of time and resource efficiencies for a Council to be able to allow minor amendments to a planning scheme or planning scheme policy to be prepared and adopted under delegation. Clarification should be provided on what is meant by a local government' in the operation of the sections 18, 19 and 20. In particular, consideration should be given to providing flexibility for minor amendments to planning schemes and planning scheme policies to be prepared and adopted under delegation where a local government so determines. It would appear that it is mandatory for a local government to first obtain a notice from the chief executive about the process for making a planning scheme (i.e. that it may not make a planning scheme by following a process in the rules) as Section 18 does not extend to the making of a planning scheme. Despite Section 18(5) setting out the minimum standard for the content that the chief executive's notice for making a planning scheme may contain, there is no detail in the provision regarding the upper limit of what the notice could address. The provision is in effect a process to develop a process with no boundaries. There is the potential for this process to introduce significant uncertainty, time delay and consequential financial implications into the plan making process. Statutory Guideline 04/14 making and amending local planning instruments 9 October 2014 (MALPI) sets out an established and sufficiently detailed and certain process for the making of a planning scheme. It is considered that Statutory guideline 04/14 represents an accepted standard and the process set out in Statutory guideline 04/14 making and amending local planning instruments should be retained. It is therefore recommended that Section 18 is extended to include making a plan with the 'default' process included in the rules. **Section 23:** There is a current lack of clarity about how a temporary local planning instrument should be accounted for in the context of an application under a superseded planning scheme, i.e. if an application is made under a superseded planning scheme and a temporary local planning instrument was in effect during the period of the superseded planning scheme. Consideration should be given to introducing provisions which clarify this matter.

	Section 25: Subsection 25(1) Reintroduces the requirement to review a planning within 10 years after the planning scheme was made or previously reviewed. There is no objection to the requirement to review a planning scheme after 10 years. However, clarification should be provided about when a scheme is considered to have been made for the purpose of subsection 22(a)(i), e.g. whether this is the adoption date and what constitutes a review for the purpose of subclause 25(1)(a)(ii) . In addition, Subsection 25(2) requires that if a local government does not amend or replace the planning scheme it must give the chief executive written reasons for this decision, publish a notice about the decision and display a notice of the decision for 40 business days. **Section 28:** Subsection 28(2) it is recommended that former subsection 25(2) be reinstated, ie that '*if subsection (1) prevents liability attaching to a local government, the liability attaches instead to the State*'. **Section 30**: Subsection 30(4)(e) the amendment of the clause is supported. However, the general comments below still apply. **Section 30:** Subsection 30(5) states that '*The rules under subsection (4) (e) must require a local government to prepare a report assessing feasible alternatives for reducing the risk mentioned in subsection (4)(e), including imposing lawful development conditions on development approvals*'. **General Comments in respect to section 30:** The use of the phrases 'could not have been significantly reduced by development conditions' and 'a significant risk to persons or property' lacks sufficient certainty as to whether or not rezoning land to address risk from natural processes is or isn't excluded from compensation. This will continue to be an impediment to a local government's ability to address natural hazards such as flooding through removing conflicts with the zoning of properties. The rezoning of land to address risk follows a statutory process which includes review by the State agencies relative to the State Planning Policy (that requires an evidential and risk based approach) and public notification as well as Ministerial approval. This should be viewed as a sufficient safeguard against unjustified rezoning of land. It is therefore recommended that in Subsection 30(4) the Planning Act should simply and explicitly state that, where a planning change is made to reduce the risk to persons or property from natural events including bush fires, coastal erosion, flooding or landslides through making or amending a planning scheme, that compensation is not payable. **Section 31:** the deletion of the word 'rights' and its replacement with the word 'claim' is supported. **Part 5 Designation of premises for development of infrastructure** should only provide for the designation of land for the carrying out of State government (or its agencies) or local government functions (ie it should not provide for the designation of land that is owned and operated commercially or privately). Privately owned infrastructure should be subjected to the development assessment processes pursuant to the Planning Bill and any relevant local planning instruments. **Section 34**: The amendment of Section 34 to record the payment of compensation on title is supported. **Section 42**: It is recommended that the Minister advise the local government when the designation stops having effect, to ensure that notations of the designation(s) on the planning scheme remain contemporary.
Chapter 3 – Development Assessment	**Section 45:** The retention of 'code' and 'impact' is supported. **Section 53(6):** This section should be amended to refer to properly made submissions only. **Section 60(2):** The proposed wording has a presumption in the favour of approval rather than an appropriate assessment of the development application against the assessment benchmarks without a presumption in the favour of approval. **Section 63(2)(h):** The inclusion of the word "and" in this clause is inconsistent with the definition of *properly made submission (clause e)* that only requires a postal or electronic address. The current bill makes it mandatory to include an electronic address however it may not be provided in the submission. Therefore it is recommended that the section be reworded to state "*the name and address (residential or business address) and address for service relating to the submission (postal or electronic address) of each principal submitter; and*". **Section 66:** It is considered that in certain circumstances there is merit in the applicant being given an option to pay a monetary contribution for non-trunk infrastructure or works in lieu of construction where it is more financially efficient and practical for such works to be undertaken at a larger scale and future date by the assessment manager or referral agency (or in some cases another developer).

	Section 81: There should be provisions to enable an affected entity or responsible entity to seek additional information for a change application. Obtaining additional information in support of an application may facilitate the changes to be supported or at least considered appropriately rather than refusing the application on the basis that appropriate information was not submitted to support the change application. **Section 82:** If a proposed change does not meet the 'minor change' criteria, a new application ought to be submitted. It is unclear what the benefits are to including the ability to make a change application that is not a minor change. It would be less confusing and more transparent if it were treated as a new application, particularly owing to the substantial changes to conditions that would potentially need to be made. **Section 83:** A clause similar to section 76(6) should be included at the end of section 81 to provide clarification regarding the amendment of ICNs as a result of any change. **Section 85(1):** Consistent currency periods of four (4) years should apply to material change of use and reconfiguring a lot development application to reduce confusion. **Section 85(1)(c):** How is "substantially start" defined? This is subjective and should be clarified. **Section 86:** Provisions should be included to enable extension application to be withdrawn by the applicant. **Section 88(2)(c):** This section has introduced an additional currency period. This should be aligned with the currency periods for material change of use or reconfiguring a lot for greater consistency.
Chapter 4 - Infrastructure	**Part 2, section 111(2):** The definition of the 'maximum adopted charge' is supported. **Section 111(4):** The definition of 'percentage increase' is supported. **Section 112(3)(c):** states that an adopted infrastructure charge must not be for – (c) development by a department or part of a department under a designation. Consequently, no requirement is placed on the development of such premises designated for infrastructure to pay relevant infrastructure charges. It is considered that this is an inequitable impost on local governments and rate payers. It is recommended that provisions are included in the Bill requiring the payment of the relevant adopted infrastructure charge for the development where demands are placed on local government infrastructure. Further, this section states that '*development by a department, or part of a department, under a designation*'. It is considered that the subclause should read 'development by a department, or on behalf of a department, under a designation' **Section 120 (1)(f):** When issuing a development permit often the exact value of conditioned trunk infrastructure is not known and can only be estimated. In some instances this estimate may be more than the actual cost of providing the infrastructure. It is considered that this section should be clarified to enable the value of the offset or refund to be determined based upon detailed design being undertaken and actual costs being determined. This would then mean that the ICN requires later amendment. **Sections 126 and 127:** The requirement for development and the conditions of approval of such development to have a nexus to trunk infrastructure to be able to condition the construction of such trunk infrastructure is problematic. In these cases the developer, the Assessment Manager and the community can be subject to increased costs resulting from the construction of redundant or ineffective infrastructure. Consideration of the broader delivery of trunk infrastructure is often efficient and supported by all three parties, and the opportunity for cost savings in delivering adjacent trunk infrastructure with development work should not be discounted. As an example, at the same time as undertaking minimal frontage works a developer may be able to deliver part or all of the necessary trunk external infrastructure for a locality without an adverse cost on the community or the Council. It is recommended that the tests for trunk infrastructure conditions be reconsidered to ensure that there is adequate flexibility for Council's to require the delivery of trunk infrastructure with development. Importantly, the Bill includes a range of provisions which protect the developer from the burden of costs associated with works above and beyond the scope of the development. Furthermore, the effect of the Bill (and any resolutions) ensure that financial sustainability is considered in making a decision to require a development to construct trunk infrastructure, especially where trunk infrastructure costs are greater than the levied charge associated with the development. Finally, in considering the application of offsets, offsets should be based on the lesser of planned and actual costs. The burden associated with all projects being based upon planned costs does not promote a competitive tendering process for works, does not promote the minimisation of costs for trunk works undertaken by developers and does not provide any support for undertaking amendments to planned costs to reflect actuals. In addition, the Infrastructure system is predicated on the apportionment of costs to development based on planned costs alone. This comes at a significant risk to the community of increased infrastructure costs (which may not be recoverable) and requires further consideration.

	Section 128(3)(b): The effect of this provision is that the actual cost rather than planned cost forms the basis for a refund but planned cost (determined through the establishment cost in the LGIP) forms the basis of charges levied. Requiring the refund to be provided for actual cost is inconsistent with how the levied charge is established and results in potential shortfalls in overall trunk infrastructure funding relative to the planned network that was subject to financial sustainability review during the LGIP preparation process. Additionally there is no incentive to pursue value for money by a developer awarding contracts for trunk infrastructure construction. It is recommended that a provision is included and subsection 128(3) amended so that a refund is calculated on the basis of the lesser of the planned costs or actual costs. **Section 134(1)(c):** This section states that '*construction of the infrastructure that is the subject of the condition has not substantially started before the development approval no longer has effect'.* This provision appears to conflict with Subsection (2), which states: *(2) The local government must refund to the payer any part of the payment the local government has not spent, or contracted to spend, on designing and constructing the infrastructure.* It is considered that for the provisions to be consistent Subclause (1)(c) should read *(1)(c) the design or construction of the infrastructure that is the subject of the condition has not started before the development approval no longer has effect.* **Division 4 Subdivision 1 Conversion of particular non-trunk infrastructure before construction starts:** The LGIP establishes and defines what constitutes trunk infrastructure through a prescribed process that requires amongst other matters compliance reviews by an independent reviewer relative to state government guidance, with the process to be used and the content of the LGIP prescribed by statutory guidelines. Pursuant to the statutory guidelines the trunk infrastructure networks are determined in the LGIP through a comprehensive modelling, planning and review process that is subject to approval by the State government. The introduction of provisions to allow the conversion of non-trunk infrastructure to trunk infrastructure has introduced unnecessary uncertainty (particularly in regards to offsets and refunds and the overall financial sustainability of the trunk infrastructure networks' delivery), confusion and has the effect of allowing for challenge to the trunk infrastructure networks set out in a local government's LGIP. It is considered that the matters relating to non-trunk and trunk infrastructure can be adequately, appropriately and more efficiently addressed in the development assessment process. Accordingly it is recommended that the provisions relating to the making of conversions applications are removed from the Bill.
Chapter 5 – Offences & Enforcement	**Section 173(1)(b)(ii):** The requirement for proceedings for an offence to be started no later than 2 years after the offence is committed will be a major impost on LG regulatory processes and is therefore not supported. **Section 173(2):** The clarification that only an enforcement authority may bring a proceeding for an offence is supported. **Section 175(6):** The registration of enforcement orders on title is supported. **Section 185(1)(d):** The clarification that an inspector may enter a 'place of business' is supported.
Chapter 6 – Dispute Resolution	**Section 228** The amendments to section 228 'Appeals to tribunal or P&E Court are generally supported. **Section 228(3)(a) T**he deletion of appeal period for an appeal by a building advisory agency of 20 days after the applicant gives a copy of the deemed approval notice has not been explained and is therefore not supported. **Section 228(3)(d)** The introduction of an appeal period against an infrastructure charges notice of 20 business days is consistent with SPA and is therefore supported. **Section 230** Ensuring that 'other appeals' are confined to matters of jurisdictional error is supported. **Section 229(2)** The deletion of the previous subclause which stated '*otherwise, a decision by the Minister under this Act, other than a decision under chapter 7, part 4, is non-appealable'* has not been explained and is therefore not supported. **Sections 231 to 253 inclusive;** The deletion of these sections and their incorporation into Schedule 1 Appeals is supported.
Chapter 7 – Miscellaneous	**Sections 266 – 275:** 'Urban encroachment', it is proposed that there needs to be more rigour around these provisions in the form of a regulation. It is unclear how this will be operated by the state, if local government will be consulted or involved and if this has implications on non-compliance and enforcement. Provision should be included in the Regulation for the local government to be advised upon the amendment or cancellation of a registered premises. **Section 269(8):** Under the previous Planning and Development Bill Subsection (8) stated '*If the owner fails to comply with this section, the failure does not affect the operation of Section 230 Restrictions on legal proceedings'.* It is recommended that this section still has legitimacy and it is recommended it should be reinstated in the Planning Bill to read: *Subsection269(9) If the owner fails to comply with this section, the failure does not affect the operation of Section 274.* **Section 271 *(3):*** *The Maximum penalty has been reduced from 200 to 20 penalty points.* This is a tenfold decrease and it is recommended that the penalty remains at 200 points.
Chapter 8 – Transitional Provisions & Appeal	**Chapter 8:** the transitional provisions appear to apply only to SPA, there is no reference to IPA or the LGP&E Act. **Section 285:** It is recommended that adopted infrastructure charges notices (and negotiated notices) are included in this list.

	Section 287(7)(a): In the consultation draft of the Bill Section 310(6) stated '(6) In this section—application includes—(a) includes a request; but does not include a claim for compensation to which section 315 applies.(ie Compensation claims). However, in the Tabled Bill s287(7) states '(7) In this section—application includes—(a) a claim for compensation; and; (b) a request; and (c) a submission for an infrastructure charges notice under the old Act, section 641. This appears to be contradictory and no explanation has been provided.
Schedule 1 - Appeals	**The establishment of Schedule 1 Appeals is supported.**
Schedule 2 - Dictionary	**Building** should include decks / verandas or similar, including if they are not roofed or not surrounded by walls. **Business Day**: It would seem prudent to adjust this clause to state 25 December to 1 January, whilst it is recognised that this definition is provided for in the Acts Interpretation Act, it would be beneficial to consolidate into a single definition for the purposes of the Planning Bill/Act. **Categorise:** has been deleted even though the term is used within the Bill. It is considered that the definition should be retained. **Chairperson:** has been deleted even though the term is used within the Bill. It is considered that the definition should be retained. **Change:** has been deleted even though the term is used within the Bill. It is considered that the definition should be retained. **Clear:** This should clearly state 'clearing of vegetation' **Environmental nuisance:** has been deleted even though the term is used within the Bill. It is considered that the definition should be retained. **Environmental Offsets Act:** has been deleted even though the term is used within the Bill. It is considered that the definition should be retained. **Minor Change** for a development application: It is recommended that the potential for new submissions or additional grounds of submission should form part of the test if an application has completed public notification before a change is made. **Minor Change** for a development approval: An additional criteria should be included relating to any increase to the level of assessment and, in the event that the original application was impact assessment, the change not be a matter to which a properly made submission is likely to relate to. **Negotiated Notice** should be changes to **Negotiated Infrastructure Charges Notice** to avoid confusion. **Non-Rural Purpose:** Rural and rural residential are not defined. **Original assessment manager:** has been deleted even though the term is used within the Bill. It is considered that the definition should be retained. **Perform:** has been deleted even though the term is used within the Bill. It is considered that the definition should be retained. **Principal Submitter**: Needs to clarify that the principal submitter still needs to meet the criteria for a properly made submission. **Sole-occupancy unit:** has been deleted even though the term is used within the Bill. It is considered that the definition should be retained.

Draft Planning & Environment Court Bill 2015

Ipswich City Council Feedback

Description	Feedback Comments
General	1. Consideration should be given to the ability for the Chief Executive of a Tribunal to refer matters to another jurisdiction. At present, the provisions only permit the reforming of another tribunal. 2. Similarly, the registrar of the P&E Court should have jurisdiction to refer matters to a tribunal where the matter may be better resolved in that jurisdiction.