18 January 2016

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

Via email: ipnrc@parliament.qld.gov.au

Dear Sir / Madam,

Re: Submission about the draft Planning Bill 2015

Thank you for the opportunity to review and comment on the draft Planning Bill 2015. Release of the draft Bill is certainly an important milestone for the planning profession and development industry and an imperative step forward in the ongoing reforms to the Queensland planning process.

Our Planning Team at Wolter Consulting Group has together reviewed the draft Planning Bill 2015 and supporting documents, listened to the video links provided on the Departmental website and attended various presentations and industry working groups. Our Planning Team, with 18 town planners and planning assistants, is one of the largest in Queensland working primarily in development assessment and facilitation, for a diverse range of private and public sector clients. We therefore have a strong working knowledge of the current planning system and present below what I hope you will agree is a submission which adopts a very practical approach from a planning practitioner's perspective, focusing on the development assessment sections of the draft Bill.

Positive aspects of the draft Bill and supporting documents

We appreciate there are many and varied beneficial components of the draft Bill, from the intention to introduce a simpler set of Development Assessment Rules, simplifying and streamlining the development assessment steps to the broadening of the role of the Building and Development Dispute Resolution Committee, there remain some systematic concerns that we appreciate the opportunity to bring to your attention.

Key Matter of Concern

The key matter which we firmly believe needs to be further considered and resolved, from a planning practitioner's perspective, is the ***change to the decision rules for impact assessment***.

Section 45(5)

Section 45 "*Categories of assessment*", sub-section (5) sets out that "*An impact assessment is an assessment that-*

(a) must be carried out –

(i) against the assessment benchmarks in a categorising instrument for the development; and

(ii) having regard to any matters prescribed by regulation for this subparagraph; and

(b) may be carried out against, or having regard to, any other relevant matter, other than a person's personal circumstances, financial or otherwise.

Subsection (a) is unsurprising however it is subsection (b) which causes concern. Examples are provided of '*another relevant matter'* however this list is not exhaustive and so does not, as we understand it, exclude any other matter. The explanatory notes describe these matters as "a range of undocumented matters". It is our understanding, therefore, that sub-section (b) allows the assessment manager to carry out the assessment "*against, or having regard to, any other relevant matter*", without first having to establish a conflict with the provisions of the planning scheme (as is understood to be the case under the current planning legislation) and regardless of whether the '*other relevant matter'* being considered is '*sufficient'* to overcome such a conflict.

The concern

The concern is a systematic one, fundamental to the planning principle of having a level of certainty in relation to development potential when owning or buying land. That expectation, on the part of the land owner, developer, planning practitioner, financial lender and / or wider community, is that there is a level of certainty for the acceptability of the aspects of a proposal that fully comply with the stated measures of the relevant planning scheme, even if the land use or precise nature of the proposal itself triggers impact assessment. While in some cases the risk associated with impact assessment compared to code assessment will be accepted, the risk analysis undertaken is complex, and typically includes an understanding of the base measures on which currently one would place some degree of certainty. The ability for "other undocumented matters" to vary these base measures stated in a planning scheme will increase the scope of risk within the development assessment process, beyond that currently understood or practiced.

For example, if a proposal triggers impact assessment and not code assessment only due to the height of the proposal being 1 storey above the acceptable outcome, it is unlikely a proponent would currently expect that simply by moving to impact assessment, the entire premise of the proposal would become questionable if

there were some other undocumented matter, perhaps not even existent at the time of purchase (eg. a shopping centre is approved within 400m radius of the site resulting in an apparent potential parking issue in the street and suddenly requiring additional car parking over and above the acceptable outcome in the planning scheme despite this potentially removing the financial viability of a project, the financial implication of which would not be a relevant matter to be considered by reference to section 45(5)(b)).

Other examples may include emerging community areas, in which development is typically impact assessable by default, where an 'undocumented matter' may seek a lower yield or lot size than otherwise typical for even the lowest residential density, or lower in height than an acceptable outcome because a street contains single storey houses even where the acceptable outcome may be double storey.

These elements of a proposal have long been considered as certain (rightly or wrongly) despite being impact assessable i.e. being able to have a height of 2 storeys in a 2 storey zone despite whether other 2 storey buildings exist yet in the area. If this has been an erroneous conclusion since introduction of IPA or SPA, then this is the issue which should be discussed and resolved, not to be given further weight or increased uncertainty.

This appears to stem from the ideal of reducing the number of categories of assessment, by ***merging compliance, code and impact assessment into 2 sub-categories of the assessment categories.*** The benefit of removal of one of these categories and essentially merging it into the others (whether it be that the former compliance and code assessment merge together into standard / code, or the former code merges partly into standard / code and merit / impact) appears to have the potential to risk the significant reduction in red tape Councils and the industry have made in lowering levels of assessment. Certainly the principle of categorising development as code assessable currently, where that development is envisaged in, or consistent with, its zones and overlays, has been an important planning principle adopted into new SPA Planning Schemes.

Other Matters requiring Further Consideration

- ***Name for code assessment –*** given the transitional provisions indicate that codes will be deemed to be assessment benchmarks during the transition, the term code will eventually fade out and so will have no relevance to this category stream. ***Recommended solution*** - It would be more relevant to be labelled 'benchmark assessment".
- ***Lapsing provisions*** – inclusion of lapsing provisions makes both proponents, applicants and Council's focus on process and not outcomes. With the significant risk of lapsing always front of mind, this adds time and cost to development, and potentially results in unnecessary Court declarations or new applications lodged and processed, adding no value to the industry. ***Recommended solution*** - if the

concern is that applications would lose their currency if forgotten altogether, the better option would be to simply allow a Council to exercise a right to lapse an application if no action is undertaken within a set time, rather than simply defaulting to an automatic lapsing.

- ***Exception certificates*** – this appears to be a good initiative but preferably could be widened in scope to be able to consider and resolve mapping errors such as overlay mapping errors in a planning scheme, earlier than simply during the assessment of a development application, and for matters which will remain assessable against other matters in the scheme eg. for a situation where the development will remain assessable but early clarification is sought about a particular mapping error. This appears to be excluded from the scope. ***Recommended solution*** – include an alternative option to (1) where the exception certificate simply exempts development from assessment of a particular assessment benchmark, for example a specific overlay code which should not be an applicable code if it is determined that the overlay mapping is in error. Existing exemption certificates should also be readily searchable beyond simply being required to be made available for inspection and purchase under the schedule to the draft Planning Regulation 2016, as this type of information needs to be readily at hand during a short due diligence period.
- ***When development may start (section 70)*** – certain aspects of a development should be able to commence before all development permits given for the development have started to have effect eg. the vegetation clearing operational works should be able to start before the earthworks or other engineering operational works have been approved.
- ***Removal of the 'roll forward' provisions association with currency periods*** - While we understand that the provisions have been quite widely criticised as being complicated and difficult to understand, they have nevertheless been widely used and applied. While simple applications may not need the additional time, larger scale projects certainly will, together with situations where a site changes hands or is caught up temporarily in shifts in the market such as the global financial crisis. The 'roll forward' flexibility provides a very practical solution to what has in many cases become a complex array of 'related approvals' necessary before a use can actually commence. Also, it has become common for a Council not to approve their earthworks operational works applications before the vegetation management operational works are fully prepared, considered and determined, which can lead to a long process to obtain all the necessary operational works permits prior to constructing the development and then finally commencing a use. While a request can be made to extend the material change of use period, this has a cost and time implication, and potential risk of refusal. ***Recommended solution:*** Alternative simpler approaches to the 'roll forward' approach may resolve the complexity (if indeed it is complex) without removing the flexibility it offers. For example, at least we should be able to simply roll forward to the building work approval, if a building work approval is required, as that would be very straight forward. For subdivisions or other approvals with no requirement for a building approval, simply roll forward to the key operational works permit such as the earthworks approval, allowing other

operational works details such as vegetation management to be resolved first without taking up currency time. Alternatively it would be simpler if there was a provision that allowed the use to commence or the subdivision to be endorsed and registered provided the development was substantially started (rather than specifically requiring the use to have started or the survey plan endorsement request to have been lodged). At worst case scenario, the default currency period for reconfiguration of a lot should also be extended to 6 years.

- ***Owners consent*** – we continue to have substantial concerns with how long it takes to obtain State land owners consent to a development application and are concerned that reintroducing State land owners consent as mandatory for a properly made application on lodgement will continue to cause unnecessary delays. ***Recommended solution*** – remove the requirement for State land owners consent as all it is giving consent to is the lodgement of a development application and nothing else. Alternatively, continue the previous concept that the State owner's consent is simply required prior to decision, so as not to hold up lodgement. Exemptions for matters such as footpath dining, awnings over footpaths and certain tidal works should be automatic.
- ***Making a change application*** – for applications decided under appeal, changes to the approval should be able to be decided by the assessment manager where there were no third parties involved in the appeal. This would remove substantial cost and time delay for certain approvals.

Thank you for the opportunity to comment. Please don't hesitate to contact me should you have any queries or wish to discuss any of these matters further.

Yours sincerely,

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Natalie Rayment

Director / Planning Manager