Submission No. 117
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Dedicated to a better Brisbane

19 January 2016

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

Email: ipnrc@parliament.qld.gov.au

Dear Dr Dewar

Brisbane City Council (Council) is pleased to provide a submission on the Planning Bill 2015, the Planning (Consequential) and Other Legislation Amendment Bill 2015 and the Planning and Environment Court Bill 2015. Please note that Council is not providing a submission on the three private members' bills.

Council's response builds upon the previous extensive advice provided to the Queensland Government throughout 2014 and 2015 on planning reform matters, including Council's most recent submission on the consultation drafts of the Planning Bill 2015, the Planning (Consequential) and Other Legislation Amendment Bill 2015 and the Planning and Environment Court Bill 2015, provided on 26 October 2015.

The key points outlined in Council's submission on the Planning Bill 2015 are set out below.

Council supports the following important aspects.

- Simplification of the development assessment provisions and the retention of the current names for the levels of assessment, being code and impact.
- Provisions to allow the automatic indexation of infrastructure charges (however further details are required).
- Requiring that the Minister's Guidelines and Development Assessment Rules be amended by the same process as outlined for a State planning policy, subject to providing adequate time for public consultation (recommended to be 40 business days).

Council has significant concerns about the following critical issues.

- Clause 63 requires the assessment manager to include reasons for the decision in the decision notice and publish a decision notice on the organisation's website, including details of the matters raised in submissions. Council supports this requirement, particularly as it promotes transparency. However, it is considered that the proposed shortened timeframes for preparing a decision notice is a significant business process change that may pose a challenge for Council to implement. Therefore it is recommended that further consultation be undertaken with Council and the timeframes be extended to allow the publication of a decision notice to occur.

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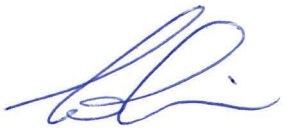
- Council would like to be assured that it has the opportunity to approve or refuse an application taking into account all matters currently considered through a development assessment process. Otherwise, a full review of the level of assessment would be required, which could result in greater numbers of impact assessable applications. Such a significant review is not supported.
- The selection of the code assessment option with a presumption in favour of approval, that is embodied in clause 60(2), is not supported. *Brisbane City Plan 2014* was prepared with a presumption in favour of the planning scheme provisions and would be unable to transition directly to operate under the new code assessment rules.
- The Planning Bill 2015 does not address several significant infrastructure planning and charging issues that will continue should the Planning Bill 2015 be passed in its current format. Council's position is that the Queensland Government should undertake a fundamental review of infrastructure planning and charging components of the Bill, with a view to ensuring that the new Planning Act results in improved outcomes for all stakeholders.
- Implementation of the new legislation will have financial and resourcing impacts on local governments, given the need to change processes and systems. Therefore appropriate support needs to be provided by the Queensland Government.

Should you require any further information about Council's submission, please contact Council's Principal Coordinator - Regional and City Strategy on or via email at erica.gould@brisbane.qld.gov.au.

Yours sincerely



Colin Jensen
CHIEF EXECUTIVE OFFICER

Att:

cc: Mr Peter Olah, Executive Director, Council of Mayors (SEQ)
Mr Luke Hannan, Manager – Advocacy, Local Government Association of Queensland

Brisbane City Council's submission on the Planning Bill 2015, the Planning (Consequential) and Other Legislation Amendment Bill 2015 and the Planning and Environment Court Bill 2015

Part 1 – Brisbane City Council's submission on the Planning Bill 2015

Planning Bill 2015

Brisbane City Council (Council) is pleased to provide a submission to the Queensland Parliament's Infrastructure, Planning and Natural Resources Committee (the Committee) on the Planning Bill 2015 (the Bill), which is covered in Part 1 of this submission, comments on the Planning (Consequential) and Other Legislation Amendment Bill 2015 are outlined in Part 2 and the Planning and Environment Court Bill 2015 comments are included in Part 3. Note that Council is not providing a submission on the private members' bills. Council's position on key planning matters is outlined throughout this submission; therefore Council is not providing a submission on the private members' bills.

Council has provided extensive advice to the Department of Local Government, Infrastructure and Planning on planning legislation matters through submissions on the *Directions Paper: Better Planning for Queensland – Next Steps in Planning Reform* (June 2015) and previous versions of the planning bills which were consulted on in September 2014 and October 2015.

Strategic comments

Key aspects of the Bill that Council supports are as follows.

1. Inclusion of the concept of ecological sustainability in the Bill's purpose, including the focus on balancing environmental, economic and social outcomes.
2. Intent for the inclusion of provisions to exclude compensation for planning changes made to reduce risk to person or property and amendments that include a reference to 'hazard'; however, Council requests that references to 'natural' events be removed and an acknowledgement be added that risks can also be from sources such as contamination.
3. Changes to reflect the new timeframe for the inclusion of a Local Government Infrastructure Plan (LGIP) in a planning scheme by 1 July 2018.
4. Ability for a Temporary Local Planning Instrument (TLPI) to have effect for two years.
5. Improvements to increase the functionality of TLPIs. Provisions that allow a Minister to approve the TLPI before it is made will minimise the chance of destruction or alteration of the subjects of TLPIs (e.g. a heritage building) once Council resolves to make a TLPI.
6. Simplification of the development assessment provisions.
7. The retention of the current names for the levels of assessment, being code and impact.
8. The ability to provide exemption certificates for some types of assessable development (noting that comments have been provided about improvements that could be made to this process).
9. Provisions to allow the automatic indexation of infrastructure charges (however detail needs to be provided on when this applies and how it will work in practice).
10. Requiring that the Minister's Guidelines and Development Assessment Rules be amended by the same process as outlined for a State planning policy, subject to providing adequate time for public consultation (recommended to be 40 business days). This is a critical requirement due to the significance of any changes made to key documents such as the Development Assessment Rules on Council's business practices.

Critical strategic planning and development assessment issues

Council has significant concerns about the following critical issues, which demonstrate that implications arising from key aspects of the Bill have not been sufficiently analysed.

1. Clause 63 requires the assessment manager to include reasons for the decision in the decision notice and publish a decision notice on the organisation's website, including details of the matters raised in submissions. Council supports this requirement, particularly as it promotes transparency. However, it is considered that the proposed shortened timeframes for preparing a decision notice, is a significant business process change that may pose a challenge for Council to implement. Therefore it is recommended that the timeframes be extended and further consultation undertaken with Council about this requirement.

2. It is unclear whether the intended and desired flexibility in the local planning instrument making and amendment process has been achieved, due to the uncertainty about what local planning instruments should contain and what development should be assessed against. Council supports the standard suite of zones and definitions in-principle, but seeks more guidance on how the system can be operated flexibly to

respond to local needs and circumstances, including the use of zone precincts and other aspects such as overlays and neighbourhood plans.

3. Transitional provisions
   - The transitional provisions in Chapter 8 do not provide sufficient guidance to Council. A key concern is that the Bill does not include specific transitional provisions for how a planning scheme made under *Sustainable Planning Act 2009* (the SPA) is to operate under the new Planning Act.
   - As a minimum, to ensure effective transitional arrangements, the scope of and approach to code and impact assessment should remain unchanged from that currently applicable in sections 313 and 314 of the SPA.
   - The current assessment rules specifically enable consideration of the purpose, overall outcomes, performance outcomes and acceptable outcomes of a code (being a zone code, development code including secondary codes, neighbourhood plan code and/or overlay code) in assessing a code assessable application. The current rules also allow the assessment manager to have regard to the purposes of any instrument containing these codes, such as the Strategic framework.
   - Council would like to maintain the opportunity to approve or refuse an application taking into account all such matters. Otherwise, Council will need to undertake a full review of the level of assessment applicable throughout the planning scheme, and potentially change levels of assessment from code assessment to impact assessment, to ensure that the range of matters currently considered is maintained. Such a significant review of the planning scheme is not supported, due to the extensive community consultation already undertaken as part of lowering some applications to code assessment in drafting *Brisbane City Plan 2014*, the onerous nature of this assessment and the short length of time since *Brisbane City Plan 2014* has been in operation.
   - In addition, the different default levels of assessment in the SPA for various aspects of development should be retained.
   - It is also noted that the transitional provisions included in the Bill are inconsistent with those in the Planning Regulation. The Queensland Government is requested to ensure that all provisions in the Bill and Planning Regulation are aligned.

4. Presumption in favour of approval for code assessment
   - The selection of the code assessment option with a presumption in favour of approval that is embodied in clause 60(2), as opposed to the presumption in favour of planning scheme provisions, which is the current setting of *Brisbane City Plan 2014*, is not supported. This change is not in line with community feedback that all applications should be assessed with consideration of residents' issues.
   - Council draws to the Committee's attention the fact that as at 4 December 2015, 97% of applications were approved.
   - It is noted that *Brisbane City Plan 2014* would be unable to transition directly to operate under the new code assessment rules, as in preparing *Brisbane City Plan 2014*, decisions about appropriate levels of assessment were made and these may be lost by the inflexibility of the provisions in clause 60(2)(a).
   - This situation reinforces Council's comments about ensuring effective transitional arrangements are outlined and that the scope of and approach to code assessment should remain unchanged from that currently applicable via s313 and s324 of the SPA.

5. Bounded nature of code assessment
   - The inclusion of the new clause 45(4) further reinforces the bounded nature of code assessment. This clause is not supported and should be removed. The clause states that an assessment manager cannot apply clause 5(2) 'An entity that performs a function under this Act must perform the function in a way that advances the purpose of this Act' in its assessment. Advancing the purpose of the Planning Act includes matters such as supplying infrastructure in a coordinated, efficient and orderly way; this is considered a valid and necessary consideration by the assessment manager in code assessment.
   - Applying this bounded assessment approach, combined with the proposal that assessment is in favour of a development approval, results in a very dramatic shift in the operating assumptions of how a planning scheme is to be drafted. This is in clear conflict with community expectations and Council does not support this approach.
   - Planning is an outcome-focused activity and no justification has been provided as to why the focus has changed to not be in favour of the outcome.
   - The proposed changes to allow wide ranging assessment benchmarks across the planning scheme, as part of code assessment are not supported. This is a fundamental change that has the potential to undermine the general trend towards streamlining code assessment.

Infrastructure planning

Council draws to the Committee's attention the following significant infrastructure planning and charging issues that will continue should the Bill be passed in its current format. Council does not support these provisions. Council's position is that the Queensland Government should undertake a fundamental review of infrastructure planning and charging components of the Bill, with a view to ensuring that the new Planning Act results in improved outcomes for all stakeholders.

Key infrastructure planning comments are set out below.

1. The infrastructure planning and charging system, through various legislative reforms since 2014 has fundamentally shifted the cost of infrastructure provision from the development industry to local governments. While some of this infrastructure is trunk infrastructure that may have been delivered by councils, much of it is infrastructure which, in the past, was funded by development. This is an unusual situation which will lead to a significant reduction of infrastructure standards in Queensland communities and may even create pressure for councils to restrict the supply of developable land.
2. Council is exposed to further infrastructure cost liability to meet its share of the dwelling targets outlined in the *South East Queensland Regional Plan 2009-2031* and through the development of Priority Development Areas (PDAs) included in *Economic Development Queensland Act 2012* that will impact on the financial sustainability of Council. Council recommends that the Queensland Government provides funding to local governments to make up the revenue shortfall in these areas.
3. The Development Assessment system is struggling under the upfront burden of the *Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act 2015* (SPICOLAA) changes and the Bill does not deal with these issues in any meaningful way. This is primarily derived from the financial decisions councils are now making in relation to approving development, and the added pressure this places on the development assessment and conditioning processes. This is of particular significance when undertaking pre-development application requirements, such as identifying establishment cost calculations to go on an Infrastructure Charges Notice (ICN), which need to be undertaken within mandatory processing timeframes. Post-decision there are a range of issues that remain in relation to the operation of the system, such as recalculations, conversions, financial burden, and operational workload and resource requirements, and that the intended benefits of this approach do not result for all stakeholders.
4. LGIP timeframe extension requirements in the Bill are onerous and overly bureaucratic.
5. The inclusion of the third party review of local government infrastructure plans has proven to be problematic during Council's recent experience of undertaking a LGIP third party review. The main issues are as follows.
    - Capped charges revenue is required to fund future trunk infrastructure. The aligned financial sustainability requirements are unachievable without a significant review of the minimum standards of infrastructure service to the community.
    - The Ministerial Guideline for making a LGIP lacks clarity around some key areas. This does not allow for any flexibility in the drafting process, and can lead to disputes over interpretation between councils and the appointed reviewers.
6. The Bill does not provide an integrated process for development assessment, delivery and funding of development related infrastructure. It continues to segregate the development assessment infrastructure charging and offsetting assessment from other components of the overall assessment of a development. This is not helpful to the development assessment system and is causing delays and uncertainty for both local authorities and applicants. The Committee is encouraged to consider the structure of the Bill and the efficiencies that could result from combining the development assessment infrastructure charging and offsetting assessment with the development assessment requirements.
7. Council does not support the conversion application process in the Bill, as it creates an unknown financial liability for the local government and limits a local government's ability to prioritise delivery of planned trunk infrastructure.
8. The framework does not give adequate opportunity for local governments to protect themselves from unreasonable claims in relation to offsets and refunds. For example, there have been instances where claims have been made requesting the local government to pay for infrastructure that has not been delivered, or that exceeds what the actual costs were, and the Bill does not give the local government any ability to scrutinise or reduce developers' claims.
9. Currently the use of infrastructure charges revenue to provide local community facilities is limited, as works to establish local community facilities are not included in the definition of 'development infrastructure' and therefore 'trunk infrastructure'. The Bill ought to be amended to allow infrastructure charges revenue to be used for works for local community facilities, to improve Council's ability to deliver new community facilities.

Implementation of the new planning legislation and supporting instruments

Implementation of the new planning legislation and supporting instruments will have financial and resourcing impacts on local governments, given the need to change processes and systems. Therefore appropriate support needs to be provided by the Queensland Government to councils.

Specific Comments

The following table outlines specific comments on key provisions of the Bill. Adoption of the following recommendations would enable Council to effectively implement the legislation.

Planning Bill 2015

Comment No.	Chapter/Part/Clause	Comment	Recommendation
Chapter 1 – Preliminary			
1	Clause 3	Revisions to the purpose of the Bill are supported.	Note support.
2	Clause 3(2)(c)	The purpose seeks a sustainable balance for development between economic growth, and the maintenance and protection of ecological processes and natural systems, and of the cultural, economic, physical and social wellbeing of people and communities. However, the infrastructure charging framework is putting the long-term financial and economic sustainability of local governments at risk. This is inconsistent with the purpose of the Bill at clause 3(2)(c), which is to maintain the economic, physical and social wellbeing of people and communities.	The infrastructure charging framework should be amended in line with the comments made on relevant sections of the Bill (particularly Chapter 4 – Infrastructure) to ensure it can align with the purpose of the new Planning Act.
3	Clause 4(d)	The reference to 'urgent or emergent circumstances' is inconsistent with the basis for which a local government may make a TLPI in clause 23(1).	Remove 'in urgent or emergent circumstances', to align with clause 23(1).
4	Clause 4(e)	Under section 115 of the SPA, planning scheme policies cannot apply or refer to other local government documents. This section is considered to be particularly onerous and has resulted in the incorporation of material into the planning scheme which is not considered necessary, for example Brisbane Standard Drawings. Council seeks to confirm (and recommends amending the Bill to remove doubt) that planning scheme policies (or some other limited part of a planning scheme) may refer to such material that has been proposed by the local government that sits outside of the planning scheme.	Amend the Bill to remove doubt, that a limited part of the planning scheme (such as a planning scheme policy) may refer to local government documents that sit outside of the planning scheme.
5	Clause 4(g)	The system to achieve the purpose also includes 'arrangements to expeditiously identify and authorise development of key infrastructure'. However, the term 'key infrastructure' is not defined.	Define 'key infrastructure' in Schedule 2.

Comment No	Chapter/Part/Clause	Comment	Recommendation
6	Clause 5	Council recommends that further provisions be added to acknowledge the social and economic effects of development.	Recommend including a new sub-clause (2) that decision making processes also consider the short and long-term effects of development on 'the cultural, economic, physical and social wellbeing of people and communities'.
7	Clause 5	The Bill identifies decision-making processes that support the achievement of ecological sustainability.	Council supports the inclusion of processes requiring account of short and long-term effects of development; application of the precautionary principle; intergenerational equity; community involvement in decision-making; sustainable use of resources; infrastructure coordination; and minimising adverse effects of development (such as climate change).
8	Clause 5(2)(h)	Reference should be made that the supply of infrastructure also occurs in a cost effective and financially sustainable manner.	Add reference to 'infrastructure supply in a cost effective and financially sustainable manner' to 5(2)(h).
Chapter 2 – Planning			
Part 1 – Introduction			
9	Clause 8(4)(d)	Clause 8(4)(d) now provides clarification that a TLPI applies instead of a planning scheme.	Note support for revision.
10	Clause 9(4)	Council strongly supports the provision to allow for a TLPI to be effective on the day that the local government resolves to give the TLPI or amendment to the Minister for approval. Clarification is required as to what would satisfy the requirement for a 'public meeting' in this provision. Detail is also required about how the written agreement of the Minister is obtained.	Note support, but subject to further clarification about the requirements for a 'public meeting'.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
Part 2 – State planning instruments			
11	Clause 10(2)	Refer to the comment for clause 18(5). If a communications strategy is not removed from the requirement for a public notice for local planning instruments, a communications strategy should be included in the public notice for State planning instruments, to be consistent.	Amend clauses 10(2) and 18(5) so that the public notice requirements for a communication strategy are consistent.
12	Clause 12	This clause relates to the making of a temporary State planning policy where urgently required to protect or give effect to a State interest. Council supports the introduction of temporary State planning policies, as required.	Note support.
13	Clause 14	The Bill is silent on the role, scope and key elements of a regional plan. In this regard, Part 4 of Chapter 2 of the SPA identifies the role of a regional plan being to advance the purpose of the SPA by providing an integrated planning policy for the region. Key elements to be included are the desired regional outcomes and the desired future spatial structure for the region. The role of a regional plan needs to be clarified, including whether a regional plan only contains matters of State interest or is considered a State interest. Section 41(5) of the SPA also contains a requirement for the Minister to consult with 'the local governments and interest groups' about certain matters before establishing a Regional Planning Committee. This provision should be included in the Bill.	Outline the role, scope and key elements of a regional plan. Clarify the role and status of a regional plan. Include provisions relating to consultation with local government prior to the establishment of a Regional Planning Committee in the Bill or the Planning Regulation.
Part 3 – Local planning instruments			
14	Clauses 15 and 17	These clauses introduce the use of 'instrument' to refer to local planning instruments (or an amendment of a local planning instrument) and to the rules and guidelines made by the Minister. In subsequent provisions, for example in clause 17, the use of the term 'instrument' could lead to confusion (e.g. an instrument being amended pursuant to the instrument). Additionally, the status of the Minister's instrument, pursuant to clause 17, is unclear as it is not included in clause 8 ('What are planning instruments') definitions.	Remove 'instrument' from clause 17(1) and use the term 'Guidelines and Rules' instead.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
Part 3 – Local planning instruments			
15	Clause 16	Further detail is required on the application of clause 16. While an increased level of flexibility in the preparation of local planning instruments is supported and addresses the overly restrictive nature of the current provisions under the SPA, further guidance is required on the operational aspects of a planning scheme that should be included in the Bill or the Planning Regulation. Due to the critical nature of how the contents of local planning instruments and the regulated requirements applies to planning schemes and development assessment, Council considers it imperative that adequate consultation be undertaken before they take effect. While flexibility is appreciated, the Bill should be amended to remove doubt about how these clauses will apply to planning schemes.	Note the need for further information and consultation on this matter.
16	Clause 16(2)	Council supports in-principle the inclusion of the suite of standard zones and standard use and administration definitions in the Planning Regulation. However, Council notes that the Planning Regulation is silent on the use of zone precincts. As Council has made extensive use of zone precincts in *Brisbane City Plan 2014*, Council would like assurance of the ability to use zone precincts into the future.	Note Council's in-principle support for the inclusion of standard zones and standard definitions in the Planning Regulation. Council requests clarification on the use of zone precincts and strongly recommends these be included as a planning element in the Bill or the Planning Regulation.
17	Clause 16(3)	It is unclear how clause 16(3) will apply to planning schemes made under the SPA or planning schemes made under different versions of the regulated requirements, as they change over time. While section 5 in the draft Planning Regulation states that subdivision 1 of the Planning Regulation (which specifies the regulated requirements) does not apply to a local planning instrument made under the old Act (the SPA) before or after the commencement, its relationship with clause 16(3) is not clear, and does not consider planning schemes (or amendments) which may be made under different versions of the regulated requirements. It is noted that the transitional provisions also do not adequately address this issue.	Amend the Bill to remove doubt regarding the application of clause 16(3) to planning schemes adopted under the SPA or previous versions of the regulated requirements.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
18	Clause 17(2)	Council supports the new requirement for making and amending Minister's Rules and Guidelines, as if the guidelines or rules were a State planning policy. However, the public notification period is too short to allow Council to review and make a formal and considered submission on any amendment. In addition, Council has concerns regarding the impact on Council business processes that may result from any future proposed amendments and its capacity to implement them in required timeframes. For example, amending the Development Assessment Rules may significantly change how development applications are assessed in Queensland. Any change may have a significant impact on the assessment process and therefore the business practices of Council.	Note support for the revised process; however, Council has concerns regarding the 20 business days timeframe, as it is too short to allow Council to review and make a formal and considered submission on amendments. It is recommended that the timeframe change to 40 business days.
19	Clause 18	The Minister's Rules and Guidelines give guidance on the two different processes for making what the Bill calls 'proposed amendments' as opposed to making a new planning scheme. Consistent terminology should be used in the Bill and the Minister's Rules and Guidelines to avoid confusion.	Ensure consistent use of terminology to describe making and amending local planning instruments in the Bill and the Minister's Rules and Guidelines.
20	Clause 18(1)	Clause 18(1) indicates that this section will apply to making or amending a planning scheme. The operation of sub-clause (8) in respect of an amendment to a planning scheme (rather than making a new planning scheme) is unclear.	Amend to clarify the operation of sub-clause (8) in respect of an amendment to a planning scheme.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
21	Clause 18(4)	To avoid confusion in the interpretation of clause 18(4) and other clauses that refer to the statutory instrument for plan making, it is recommended that the statutory instrument and the parts that make the up the instrument avoid similar names and references. The Bill and the statutory instrument should also use consistent terminology. The similarity between references in the Bill for the 'Minister's Guidelines and Rules' and its associated parts including the 'Minister's Guidelines' and 'Minister's Rules' could lead to confusion. In addition the Bill refers to the statutory instrument as the 'Minister's Guidelines and Rules' whereas the draft statutory instrument is titled the 'Plan Making Rules'. The Bill also refers to the 'Minister's Rules' whereas the draft statutory instrument refers to the 'Minister's Plan Making Rules'.	Amend the naming and references of the statutory instrument for plan making, to ensure clauses can be clearly interpreted.
22	Clause 18(5)(d)	Remove the requirement for a communications strategy to be included in the public notice for local planning instruments, to be consistent with the requirements for State planning instruments identified in clause 10(2).	Remove the requirement for a communications strategy to be included in the public notice for local planning instruments.
23	Clause 19	It is unclear whether tidal creeks which are located entirely within a local government area (rather than next to a local government area) are included in the tidal area for a non-port local government area.	Clarification is required.
24	Clause 20	Refer to the comment for clauses 17(2) and 18. In addition a further provision is required that allows local governments to exercise their discretion to proceed with an amendment under either the version of the Minister's Rules and Guidelines in effect when the process commenced or the version in effect at the time.	Include a further provision that allows local governments to exercise their discretion to proceed with an amendment, under either the version of the rules in effect when the process commenced, or the version in effect at the time.
25	Clause 20	Refer to comment for clause 18(4)	
26	Clause 21	Refer to comment for clause 18(4)	
27	Clause 22	Refer to comment for clause 18(4)	
28	Clause 23(2)	The ability for a TLPI to be amended is supported.	Note support.
29	Clause 27(5)	The ability for the Minister to recover expenses incurred by the Minister in using the power to take urgent action is not supported, due to the uncertainty about what would be considered urgent.	Remove clause 27(5) or alternatively provide a similar provision to allow local government to recover costs against the Queensland Government where directed to undertake action under clause 26.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
30	Clause 28	The introduction of this provision for a local government to not incur liability for complying with a direction by the Minister is strongly supported.	Note support.
Part 4 – Superseded planning schemes			
31	Clause 29(3)	Typographical error in line 5 – 'become' should be 'became'.	Correct the grammatical error.
32	Clauses 30(2), 30(3) and 30(4)(d)	The Bill defines an adverse planning change as a planning change that reduces the value of an interest in premises. The Bill also states that an adverse planning change can include a public purpose change, which includes limiting the use of premises to a public purpose. However, the Bill states that an adverse planning change does not include a matter included in a LGIP. This is confusing and appears to be inconsistent, as any future trunk infrastructure included in a LGIP is taken to be for a public purpose.	Consider the need to resolve the internal inconsistency or adequately explain if there is no inconsistency relating to a LGIP matter (which is for a public purpose – albeit exempt from compensation) compared to other public purposes, which are not exempt from compensation.
33	Clause 30(3)(b)	'Public purpose' is not defined.	Define 'public purpose' in Schedule 2.
34	Clause 30(4)(e)(i) and (ii)	Council supports excluding planning changes that are made to reduce the risk to person or property from natural events. The provision should also recognise the obligations on local governments to update local planning instruments to adequately reflect risks and existing conditions beyond 'natural' events or processes. Local governments should not be exposed to potential claims for compensation when making adverse planning changes in response to existing hazardous conditions (such as where increased buffer distances from lawful development involving hazardous activities are required) or contamination. 'Serious environmental harm under the *Environmental Protection Act 1994*' needs to be added to this provision. Clause 30(4)(e)(ii) does not recognise that a planning scheme may be made in accordance with clause 18, rather than by following the process in the Minister's Rules.	Note support for the exclusion of planning changes made in response to natural events. Include 'serious environmental harm under the *Environmental Protection Act 1994*' in clause 30(4). This clause should be amended to reflect that a planning scheme can be made or amended in accordance with Chapter 2, Part 3, Division 2 of the Act.

Comment No	Chapter/Part/Clause	Comment	Recommendation
35	Clause 30(5)	Clause 30(5) appears onerous; it requires a local government to prepare a report assessing feasible alternatives for reducing the risk mentioned in sub-clause 4(e), including imposing development conditions on development approvals. To be able to impose development conditions there is a need to have relevant provisions in the planning scheme. It is recommended that this requirement be removed and the approach under the SPA is included. If it must be maintained, more information needs to be provided about when a feasibility assessment would be required and what it might include, with a particular emphasis placed on ensuring that such provisions are not overly onerous, especially in situations where: • the change will impact on multiple properties across the city • an amendment is made to reflect changes to State Planning Instruments • amendments provide updated information e.g. flood modelling. In relation to the proposed rules for the assessment, the decision should be one made by local government based on (a) and (c). There is no one qualified person who could be expected to make such a broad ranging decision.	Council recommends removing clause 30(5) and reverting back to the approach under the SPA. If the clause is maintained, provide clarity on when a feasibility assessment would be required and what it should include.
36	Clause 32(3)	The inclusion of the requirement to give a notice of intention to resume or notice of Council's decision within 70 business days after a claim being made, is not supported. Given the often complex nature of assessing and deciding claims for compensation, as well as constraints associated with budgetary processes, this timeframe is insufficient. If a timeframe is considered necessary, it should be one that adequately reflects the time involved in deciding these claims. A timeframe of 120 business days is considered appropriate, when compared to timeframes provided to claimants.	Remove the timeframe of 70 business days, include the timeframe of 120 business days.
37	Clause 34	This provision, which requires the payment of compensation to be recorded on title, is supported.	Note support.
Part 5 – Designation of premises for development of infrastructure			
38	Clause 36(5)	This clause describes that the Minister may be satisfied of adequate environmental assessment including adequate consultation by 'another way' other than the process in a guideline, which is applied by the draft Planning Regulation. Council seeks to clarify the intention of this provision and what other ways clause 36(5) can be satisfied.	Clarify the intent of clause 36(5).

Comment No.	Chapter/Part/Clause	Comment	Recommendation
39	Clause 36(7)	A designation does not recognise that the facility will have a reliance and impact on the trunk infrastructure network. Council suggests that the criteria for making or amending designations is amended to explicitly refer to impacts on infrastructure planning and charging, as a matter the Minister should have regard to. Council should retain the ability to levy charges where a facility creates a demand on Council's trunk infrastructure network (refer to comments for clause 112(3)).	Amend clause 36(7) to include impacts on infrastructure planning and charging as a matter for consideration.
40	Clause 37	Council supports the retention of the provisions outlining that a designator must consult with affected parties (including a local government) and that affected parties can make a submission in relation to the proposed designation. Council supports consultation with each local government that the Minister considers will be affected by the designation, as this can also trigger the assessment of cross-boundary matters where a designation is proposed in an adjoining local government area.	Note support.
41	Clause 37(6)	It is noted that the draft statutory instrument for the designation of infrastructure by local government states that formal endorsement by the Minister may be required. The role of the Minister in the local government designation process should be outlined in the Bill to provide certainty of when formal endorsement is required.	Amend the Bill to outline the role of the Minister in the local government designation process.
42	Clause 38(1)	Council supports the retention of the provisions for the Minister to consider properly made submissions with respect to making or amending a designation.	Note support.
43	Clause 39(2)	The clause needs to be amended, to include a 'further' [six years] from when the Minister may extend a designation, for clarity.	Include 'further' to read 'for up to a further six years', for clarity.
44	Clause 42	Currently, the provision of details to local governments is inconsistent and as such it is difficult to ensure that records held by a local government are complete. It is recommended that the Queensland Government maintain a data set of designation information that is referred to by local governments.	Recommend that the Queensland Government maintain a data set of designation information.

Comment No	Chapter/Part/Clause	Comment	Recommendation
Chapter 3 – Development assessment			
Part 1 – Types of development and assessment			
45	Clause 43(1)	No case has been established as to how the concept of assessment benchmarks will improve the development assessment process. Council supports section 313 of the SPA being reinstated.	Clarify the concept of assessment benchmarks and reinstate the assessment criteria in section 313 of the SPA in the Act as the scope for assessment.
46	Clause 44(6)(a)	This clause changes the default level of assessment for all aspects of development to accepted (which is currently called exempt). It is unclear how this change will impact on the operation of *Brisbane City Plan 2014*, given the current default level of assessment (as per the SPA) varies according to the aspect of development i.e. is impact assessable for material change of use, code assessable for reconfiguration of a lot and only exempt for building work and operational work . It is unclear whether the planning scheme can automatically transition and operate under the new provisions without detailed review and possible significant revision.	Amend clause 44(6)(a) to reflect the default level of assessment for each type of development under the SPA. Address the transition of the existing default levels of assessment in the transitional provisions.
47	Clauses 44 and 45	The assessment provisions within clause 45 on what and how each category is required to be assessed, are similar to those previously contained in the *Integrated Planning Act 1997*, and these have some significant differences to the current code assessment approach in the SPA provisions. Refer also to Council's comments on clause 60 and 288. It is unclear how the assessment rules in s5.3.3 of *Brisbane City Plan 2014* for code assessable development (which comply with the s313 of the SPA), will continue to operate under the new Act. In particular, the assessment rules currently enable consideration of the purpose, overall outcomes, performance outcomes and acceptable outcomes of a code (being a zone code, development code including secondary codes, neighbourhood plan code and/or overlay code) and s313(3)(d) of the SPA that the assessment 'is to have regard to the purposes of any instrument containing an applicable code' and that in that regard 'the strategic framework is considered to be the purpose of the instrument containing an applicable code'. Unless all aspects of these relevant codes and the strategic framework are considered to constitute an assessment benchmark for/be considered in code assessment, Council will need to undertake a full review of the level of assessment applicable throughout the planning scheme.	Council supports the retention of the current naming conventions for the categories of assessment for assessable development. Council has significant concerns regarding the scope of matters to be considered in code assessment, in the absence of clear rules for assessment against the purposes of an instrument containing a code. Council supports an amendment to clarify how code assessment is to be carried out having regard to the purpose of a code.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
48	Clause 45(4)	Council does not support the introduction of the new section 5(1) that states that 5 (1) 'An entity that performs a function under this Act must perform the function in a way that advances the purpose of this Act' does not apply to code assessment. Advancing the purpose of the Act, as outlined in 5(2), includes matters such as supplying infrastructure in a coordinated, efficient and orderly way. As such it is considered that such elements are a valid consideration by the assessment manager in code assessment.	Remove clause 45(4).
49	Clause 45(5)(b)	Council does not support the proposed test for assessment against or having regard to 'any other relevant matter', or the examples included in the clause other than 'planning need'. Council supports the 'sufficient grounds' test having regard to matters or public interest or planning grounds.	Amend the clause to reinstate a sufficient planning grounds test.
50	Clause 46(1)	'Exemption certificate' is not defined in the Bill.	Define 'exemption certificate' in Schedule 2.
51	Clause 46(1), (2) and (3)	Council supports the ability to provide exemption certificates for some types of assessable development. This provision will be beneficial for exempting minor or inconsequential development from having to apply for a development approval. In particular, Council sites subject to community leases would greatly benefit from this process and would reduce their costs for a minor expansion or upgrade to a community facility, as well as removing low impact development applications from the development assessment system. The provision of an exemption certificate does however create implications for ICNs and conflicts with planned infrastructure, amongst other development considerations. If criteria or definitions are introduced for administering exemption certificates, the application of these needs to be completely within the control of local government, due to the infrastructure planning implications. The legislation should also be explicit about the ability to provide conditions with an exemption certificate albeit within the scope of the criteria for which an exemption certificate can be issued – i.e. the ability to issue an exemption certificate with conditions should not replace a situation where a development assessment process is more appropriate. It is also recommended that a mechanism be included to require that the local government keep a register or record of issued exemption certificates.	Note support of exemption certificate process and the request that consultation be undertaken with local government on any criteria or definitions introduced for exemption certificates. Amend the legislation to explicitly provide the ability to include conditions with an exemption certificate. Include a mechanism that requires local government to keep a record or register of exemption certificates that are issued.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
52	Clause 46(4)(a)	The requirement to give a copy of an exemption certificate to each owner of the premises is unnecessary and adds additional workload to local government. Requests for an exemption certificate will be made by the party involved in the proposed development. In the majority of cases this will be the owner of the premises or the owner's representative. Requiring the local government to provide a copy of the certificate will result in the owner being advised twice in these circumstances. Where the premises are subject to a sale then the legal contract of sale processes would protect the rights of the owner of the premises. Council does not have access to current ownership details. This may result in incorrect notification. The draft Planning Regulation 2016 Schedule 30 requires exemption certificates to be kept available for inspection and purchases, so the certificates will be available to all interested parties.	Remove the requirement to provide the owner with a copy of an exemption certificate.
53	Clause 46(9)(c)	This provision outlines a requirement that a development approval is not required for reconfiguring a lot that is the subject of an exemption certificate. The need for sub-clause (c) is not understood, as 'development' is defined in the Bill and includes reconfiguring a lot.	Remove clause 46(9)(c).
Part 2 – Development applications			
54	Clause 51(2)(c)	To assist with the implementation of clause 51, a change needs to be made to the definition of 'excluded premises' in schedule 2 so that it includes 'State-owned land'.	Amend the definition of 'excluded premises' in schedule 2 to include 'State-owned land'.
55	Clause 53(9)	Council supports the new clause which states that a business day does not include a day between 20 December of a year and 5 January of the next year.	Note support.
Part 3 – Assessing and deciding development applications			
56	Clause 58	Council opposes provisions which effectively remove its ability to provide referral agency advice if a response is not provided within the prescribed time period. By reducing development assessment and approval timeframes, there is concern that this provision may be used to the detriment of the public interest due to the competitive nature of private building certification. Council recommends that referral agency assessments for building development applications under the *Building Act 1975* be excluded under this section consistent with the current requirement in section 286(2) of the SPA.	Insert new subsection (3) that states that subsection (1) does not apply to an application if: a) the application is for a building development application b) the referral agency is the local government.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
57	Clause 60(2)	This provision does not clarify what elements of a planning scheme are able to constitute assessment benchmarks for the purposes of code assessment. Therefore Council has not been able to assess the full impacts of this provision. If the strategic framework is not considered to be an assessment benchmark (i.e. is unable to be considered and used as criteria for deciding to refuse or approve an application, as is currently the case), then clause 60(2) is not supported. This clause will require the redrafting of aspects of Council's planning scheme and could result in adverse impacts on development. A potential outcome could be shifting development to impact assessment, which should be reserved for development which is not envisaged in a particular area or where third party opinion is warranted. Specifically, clause 60(2) does not provide the required level of flexibility to make an informed decision taking into account all relevant aspects of the planning scheme. The presumption in favour of approval that is embodied in Clause 60(2), as opposed to the presumption in favour of the planning scheme provisions, which is the current setting of *Brisbane City Plan 2014* is not supported. In preparing *Brisbane City Plan 2014*, decisions about appropriate levels of assessment were made and these may be lost by the inflexibility of the provisions in clause 60(2)(a). This is a significant issue for Council, particularly given the recent adoption of the planning scheme.	Redraft clause to maintain the current arrangements under the SPA including providing local governments with the flexibility to not approve an outcome not contemplated by planning scheme codes (assessment benchmarks) that would not meet expected outcomes for the community as articulated in the zone codes, strategic framework and LGIP.
58	Clause 43(6)(b)	The wording 'natural and ordinary consequence' is uncertain and may lead to conflict between applicants and assessment managers.	Clarify what is intended by 'natural and ordinary consequence'.
59	Clause 63(2)(h)	The requirement for decision notices to state the name, residential or business address and electronic address of each principal submitter is supported.	Note support.
60	Clause 63	Numbering appears incorrect, goes from 63(4) to 63(7)	Correct numbering if these clauses are retained.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
61	Clause 63(4) and (7)	Clause 63 requires the assessment manager to publish a decision notice and reasons on a website, including details of matters raised in submissions. These requirements will generate additional work for Council and require business realignment. While creating additional tasks for councils, the Development Assessment Rules on the other hand reduce assessment and decision making timeframes, including removal of the current five business days to notify of a decision. Timeframes need to be extended to ensure a realistic and practical process.	Council supports this requirement, particularly as it promotes transparency. However, it is considered that the proposed shortened timeframes for preparing a decision notice, is a significant business process change that may pose a challenge for Council to implement. Therefore it is recommended that the timeframes be extended and further consultation undertaken with Council about this requirement.
62	Clause 64	The deemed approval provisions should only apply where the assessment manager, for standard assessment, is either the local government or the chief executive. This would ensure appropriate safeguards are in place to prevent deemed approvals being issued inconsistently. This would also ensure local government is confident in the decisions made by appropriately qualified persons.	Amend the Bill to exclude the deemed approval provisions from applying to development applications where the assessment manager is not the local government or chief executive.
63	Clause 64 (4)	Reference to section 63(1)(b), (d), (e). Deemed approvals only apply to code applications so reference to (e) – each principal submitter is an error. Reference should be 63(1)(b),(c) or (d).	Correct the error.
64	Clause 65(2)	The Bill sets out permitted development conditions which may be imposed on a development approval. However, it fails to state that a development condition may require an offset condition to be imposed under the provisions of the *Environmental Offsets Act 2014* (Offsets Act). In this regard, while section 14 of the Offsets Act allows an administering agency to impose an offset condition under another Act, this is vaguely worded. To remove any doubt, the Bill should include a provision permitting environmental offset conditions.	Include permitted development conditions relating to environmental offsets. The inclusion of the following is suggested. (f) Require environmental offsets for the development including: (i) payment of a financial settlement offset; or (ii) works for a proponent-driven offset on the impact site; or (iii) works for a proponent-driven offset on an offset site; or (iv) a combination of these.
65	Clause 65(2) Note	This note refers to Chapter 4 (Infrastructure) parts 2 and 3 for other requirements for conditioning development. It would be preferable that all conditioning rules of the Bill were located together for ease of implementation and streamlined consistent development assessment decisions.	Amend the Bill to locate all conditioning requirements together.

Comment No	Chapter/Part/Clause	Comment	Recommendation
Part 4 – Development assessment rules			
66	Clauses 68(3) and 69(3)	Section 10 (3)(b) states that the submission period for amending a State planning policy is 20 business days. Amending the Development Assessment Rules may significantly change how development applications are assessed in Queensland and therefore the business practices of Council. 20 business days is too short a period to allow 'the Council' to review and make a formal and considered submission on amendments. Council supports a longer timeframe of 40 business days applying to consultation, in respect of an amendment to the Development Assessment Rules. Council does not support section 11 applying to the amendment of the Development Assessment Rules. Clause 68 should also be amended to provide adequate time for assessment managers to make changes to assessment processes and systems.	The identification of the process for the Minister making or amending the Development Assessment Rules is supported. The period for submissions on any amendment to the Development Assessment Rules should be lengthened to allow adequate time to consider an amendment. The timeframe for making a State planning policy (40 business days) should be used. Amend clause 68 to remove the application of section 11 and provide adequate time for local authorities to adjust business systems and processes.
67	70(1)(c)	This new provision requires any superseded versions of the Development Assessment Rules to be available. Further clarification is required regarding the application of superseded versions of the Development Assessment Rules, for example, to processes started but not finished before an amendment to the rules takes effect.	Amendment supported so that the rules applicable at the time of making/amending the scheme are available. Further clarification is required regarding transitional issues where an amendment takes effect.
Part 5 – Development approvals			
68	Clause 73(b)	Clarification is requested in respect of who is an 'occupier' of land. A contractor carrying out works on premises should be bound by a development approval.	Amend this provision to clarify that an occupier includes any person or entity exercising a development approval.
69	Clause 75	This provision enables an applicant to make change representations by giving a notice to the assessment manager. Clause 75(3) states that only one notice may be given. Clause 75(4)(b) states that, if the change representations are made within 20 business days, the applicant can withdraw the notice by giving another notice to the assessment manager. This is contradictory.	Amend the provision to improve clarity.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
70	Clause 80(4) and (6)	The provision for an applicant notifying affected entities of minor change application under sub-clause (4) states that this must be done 'as soon as practicable' after giving the application to the responsible entity. As there is no provision for the applicant to advise when this action has been undertaken, there is no ability for the responsible entity to determine when an affected entity's response is due to decide the application in accordance with sub-clause (6). Applicant notification is required.	Include applicant notification of completion of the actions in provisions sub-clause (4).
71	Part 6 Subdivision 2 and 3	The provisions under these subdivisions do not state or identify the implied effect of a changed development approval as a replacement of the original development approval. There are instances where applicants have either incorrectly developed in accordance with an original development approval or have applied to change an original development approval that was already replaced by a changed development approval.	Clarify the effect of a changed development approval.
72	Clause 85(1)	This clause sets out the currency period for a material change of use approval. It states that if the first change of use does not happen six years after the approval starts to have effect (i.e. where no period is stated in the approval), then the approval lapses. The current provisions of the SPA give an applicant four years to effect a material change of use. As many circumstances can change over time, Council believes that a six year currency period is too long and that four years is a satisfactory time period to undertake a development (particularly as, if applicants are genuinely intended to proceed with the development, they can apply to extend the currency period). Council suggests that the currency period be only four years and that any applicant wanting to take more than four years, should have to gain approval for an extension of time from the local government. This approach would give the local government an opportunity to reassess the merits of the development approval in light of any changed circumstances.	Council recommends changing the currency period for a material change of use to four years.
73	Clause 88	Reference to 'period or periods' should be clarified in line with the Bill terminology by the use of 'currency period or periods'.	Amend clause 88 for clarity.
74	Clause 89	No consideration has been given to decisions made other than by the local government. The clause should reflect the need to record all decisions made, including by other than the local government, be it an assessment manager identified under Regulation or a 'chosen' assessment manager. Procedures are required around ensuring that the local government is advised of any decision, by a third party assessment manager.	Clarity is required around recording of decisions that meet the criteria in the clause, where the decision is made by a third party assessment manager, be it an assessment manager identified under Regulation or a 'chosen assessment manager'.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
75	Clause 89(3)	Council supports that the notation of particular approvals is not considered to be an amendment to the planning scheme.	Note support. Relevant provisions for scheme amendment should allow this to occur without following a minor amendment process.
Part 7 – Minister's Powers			
76	Clause 90	As the Minister has the power to give directions or call in development applications and associated change applications, this gives the Minister the authority to issue a trunk condition, which then places a financial burden on local government.	Add a provision to outline that the Minister is required to consult with the local government prior to imposing a trunk condition.
77	Clause 91	This clause limits the Minister's powers in regard to various types of development applications to matters relating to a State interest. Council supports the use of the Minister's powers for a State interest only.	Note support.
78	Clause 92	The broad power in clause 92 denies natural justice to affected parties. This power should be limited to emergency situations only. In other cases the Minister should be requested to consult.	Amend the provision to reflect that this power should be limited to emergency situations only. Add the requirement for the Minister to consult in other circumstances.
79	Clause 95	The inclusion of this provision about directions to decision makers for current applications is not supported. It is noted that this clause has been expanded to now include 95(d)(ii) where the Minister may direct a decision maker to give a preliminary approval. This revision is also not supported.	Remove the provision.
80	Clause 101(1) and (3)	This clause should explicitly state that this power can only be exercised in respect of a state interest, as per section 424 of the SPA. The requirements for a proposed call in notice should also be explicitly identified in the Act, rather than dealt with in the draft Planning Regulation, for certainty. Council supports the retention of the existing provisions in section 424A of the SPA. This approach is consistent with the requirements for a call in notice and a decision on a call in being explicitly identified in clause 102 and 104, rather than being left to the draft Planning Regulation.	Amend the provision to explicitly state that this power can only be exercised in respect of a State interest and to identify the requirements for a proposed call in notice (consistent with the existing requirements in section 424A of the SPA).
Part 8 – Miscellaneous			
81	Clause 106	An extension of the scope of covenants to assist with achieving integrated development outcomes, such as subdivision and associated building design, to reduce the associated fees (including for plan sealing and stamp duty) is recommended. This could be facilitated through amending clause 104, but may also result in consequential amendments to the *Land Title Act 1994*.	Extend the scope of covenants to assist with achieving integrated development outcomes.

Comment No	Chapter/Part/Clause	Comment	Recommendation
82	Clause 106	This clause relates to a use or preservation covenant being entered into in connection with a development application for preserving a native animal or plant, or protecting a natural or physical feature. Council suggests the term 'use or preservation covenant' should be included in Schedule 2 Dictionary.	Include 'use or preservation covenant' in Schedule 2.
Chapter 4 – Infrastructure			
Part 1 – Introduction			
83	General comment	The continued operation of the current capped infrastructure charges framework will lead to under-recovery of infrastructure costs for local governments and a lack of integration, equity and economic efficiency. These matters have been further compounded by the infrastructure funding process introduced by amendments to the SPA that occurred in July 2014 through the SPICOLAA. There are implementation challenges in the structure of the Bill, similar to the current Act, which scatter and divide provisions related to development assessment. The Infrastructure chapter has functions that are more practically aligned with: • the preparation of a resolution being aligned with Chapter 2 – Planning • the development conditioning of infrastructure and issuing and content of ICNs being dealt with in Chapter 3 Development Assessment.	Detailed consultation with local governments regarding the impacts of the current capped infrastructure charges framework and the 2014 SPICOLAA amendments to the SPA. Council recommends that restructuring to the Bill occur to reduce the challenge of implementing inconsistent provisions.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
Part 2 – Provisions for local governments			
84	Clause 110	This part (i.e. Infrastructure charges) only applies if a planning scheme includes a LGIP. The LGIP definition in the Bill is 'prepared under a guideline made by the Minister' but does not make any reference to a Priority Infrastructure Plan (PIP) that transitioned to a LGIP without meeting the guideline, which is currently the situation for Council. As the transitional LGIP currently in place for most local authorities (including Brisbane) do not meet this definition in the Bill, it appears to remove Council's ability to impose infrastructure charges until a guideline-compliant LGIP has been adopted.	It is strongly recommended that an amendment be made to the transitional provisions (or the LGIP definition, or this clause) to ensure that local governments can transition their current 'transitional LGIP' and continue to impose infrastructure charges.
85	Clause 111	The matters to be prescribed in a regulation with respect to adopted charges are similar to the existing State Planning Regulatory Provisions (SPRP) under the current capped charges framework, including: • the continued application of a standard average charge with a 'cap' which will result in under-recovery by local governments and distortions, which will result in a lack of integration, inequity and economic inefficiency • the Minister having the power to prevent adopted charges being determined in a resolution for certain types of development, which may have financial costs to local governments • the power to prohibit development from being subject to infrastructure charges will lead to continued under-recovery of costs for local governments and a reduction in the quality of infrastructure and services to local communities. The maximum adopted charge rates identified in the draft Planning Regulation 2016 are the same charge rates as the current Infrastructure Charges SPRP, which have not increased since charges were first capped in July 2011.	It is recommended that the Queensland Government consults with local governments regarding the following. 1. Increasing each of the capped charge rates in the draft Planning Regulation to an appropriate charge rate. 2. The impacts of the loss of revenue in this revenue stream since the maximum charges were introduced such as trunk infrastructure funding shortfalls and standard of service. 3. How the funding shortfall has been made up or otherwise. 4. How the Government can assist to deliver trunk infrastructure or provide additional funding.

Comment No	Chapter/Part/Clause	Comment	Recommendation
86	Clause 111(2)	The ability to index the maximum adopted charge prescribed in a regulation is supported however it still does not: • address the separation between the value of infrastructure for a local government to fund, and the value of the charges able to be levied (revenue shortfall) • provide clarity around the transitional provisions for existing charge notices issued • identify how the indexation is to be applied in practice using an actual example • increase the base capped charge rates in the draft Planning Regulation 2016, which have not been subjected to a detailed review or analysis.	Council recommends the following: 1. The first indexation to occur, as soon is practical, after the commencement of the Bill (this could be before March Quarter 2017). 2. Local governments be consulted regarding the revenue shortfall. 3. Details of how the indexation will apply in practice be provided including transitional provisions. 4. Increase the base capped charge rates in the Regulation following a detailed review and analysis and consultation with local government.
87	Clause 112(3)	The inability to apply charges to the items identified in section 3, particularly PDAs, does not acknowledge that certain types of these developments and land uses create a significant impact on the maintenance, planning and funding of Council's trunk infrastructure networks. Council is exposed to further infrastructure cost liability through the need to meet the South East Queensland Regional Plan growth and PDAs included in *Economic Development Queensland Act 2012* that will impact on the financial sustainability of Council.	Council recommends that the Queensland Government provides funding to local governments to make up the revenue shortfall in these areas.
88	Clauses 118-120	This subdivision could be integrated or located with the Development Assessment Chapter. It is also noted that the timeframes for development assessment sit in the Development Assessment Rules and outside the Bill, but time frames for ICNs are in the Bill. This inconsistency creates unnecessary administrative challenges.	Restructure the Bill to address these comments.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
89	Clause 118	Sub-clauses (5), (6), (7) and (9) are unclear in relation to how the ICN is to be amended and in relation to the methodology for calculating the charge, particularly in relation to a change to a development approval. It is difficult to measure a change in the scale of development, where the value of an adopted charge has no relationship to the apportioned cost of demand which a development places on an infrastructure network. For example, has a change in scale occurred when there is no increase in Gross Floor Area, but the demand on the infrastructure networks has increased as a result of a change in use? Is the adopted charge rate the measure used to determine this or is there another test? It is also unclear how the new charge relating to a change or extension is to be calculated, for example, by applying the instrument that applied to calculating a charge at the time of the original approval, or the instrument that applies at the time of the decision about the change or extension? Sub-clause (7) limits a charge notice to be issued in relation to the change only. Sub-clause (9) states that the amended infrastructure charges notice replaces the infrastructure charges notice. It is unclear as to whether the amended infrastructure charges notice will apply: • a single instrument to the total additional demand, that is applying the charges resolution that is in place at the end of the decision on the changes application to the total additional demand, or • two instruments, that are applying: i. the charges resolution that is in place at the time of decision on the original approval to the original additional demand, and ii. the charges resolution that is in place at the time of the decision on the changes application to the increased demand resulting from the changed application or the part of the development that is amended. It is preferable that an amended notice be issued for the entire changed approval, as identified in the first bullet point above, applying a single instrument to the total additional demand after the change has been approved, not just the part of the application that changed. This will avoid having complicated charge notices that are in two parts with multiple instruments and will create simplicity in this complicated system.	Review clauses to provide certainty including: • identify the charging instrument to be used to calculate the charge for the changed or extended development approval • amend sub-clause (7) as follows: (7) However, an ICN may only be given or amended under subsection (5) or (6) if the notice or amendment relates to an extension of the development approval or a change in development demand. The charges resolution in place at the time of the decision on the changed application is to be applied to the additional demand created by the changed development in its entirety.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
90	Clause 119(2)(b)	This clause is currently drafted without a time limitation on any previous lawful use, which may have taken place on the premises at any time prior to the development application being made. This is unworkable and does not bear any relationship to the existing demand on the infrastructure networks. It may also discourage local government to allow further self-assessable development.	Recommend that a limitation be placed on the previously lawful use that is not included, such that it must be either a previously lawful use that was operating a) within two years of lodging a properly made development application; or b) at the time the current LGIP (or applicable infrastructure planning instrument) took effect.
91	Clause 119(4)(b)	This definition is incomplete and needs to include a reference to a notice mentioned in section 298(1).	Amend clause to read '<u>or section 298(1)</u>'.
92	Clause 120(1)	Proposes a change from the current Act (which requires 'details' of the offset and refund to be included in the ICN) to a requirement to include 'information about' the offset and refund in the ICN. The intent of this change is unclear as it is implied by clause 135 of the Bill that local governments must provide a specific value for the infrastructure, and a payment date if it is a refund. The definition of 'information' does not provide any clarity. The requirement to identify a refund in an ICN, being future expenditure of a local government, is not supported by a corresponding budgetary process for Council. It is challenging to identify budget requirements up front, particularly when certain development approvals may not be carried out. Clause 120 will continue to significantly impact upon development assessment timeframes because local governments will seek to understand the financial impact of development decisions, prior to issuing development approval. Further, the budgetary processes for administering this clause remain unclear. It is preferable to make reference to a valuation process or methodology in councils' Adopted Infrastructure Charges Resolutions rather than give a specific dollar amount in the ICN.	Consideration should be given to aligning the budget processes of local governments to the identification of a refund in an ICN.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
93	Clause 120(2)	It appears that the intent of sub-clause (2) is to give the applicant an opportunity to waive the local government's obligation to advise the establishment cost in the ICN. This may assist in reducing the impact of clause 119(1) on development assessment timeframes. However, it will not significantly alleviate the problem. As local governments are required to fund development infrastructure associated with the development approval, they will seek to gain an understanding of their potential liability prior to issuing a development approval. Regardless of whether the value is stated in the ICN or not, this process (decision-making and cost analysis) will take time. Additional comments are as follows. • If sub-clause (2) is enacted by the applicant and 'information' is not included in the notice, there does not appear to be any provisions to then have the information included in an ICN at a later date. • There is no detail about the timing for when the request to apply sub-clause 2 would need to be made, and an applicant will not necessarily have visibility that a trunk condition is under consideration. • This option to 'waive' the right to information in the ICN could be made the default process, and provision can be made for the applicant to request further information in the ICN after the decision has been made e.g. at negotiated decision or subject to a change request. To have an effect on development assessment timeframes, this voluntary 'waiver' would have to be accompanied by a change in provisions relating to local governments' financial liability. For example, the decision to waive the requirement to inform the applicant of the offset should be accompanied by a waiver of access to a refund, beyond the money levied by the local government for the relevant offsetable infrastructure.	That consideration is given to the comment, so a functional and efficient process can be established for both the development industry and the local government.
94	Clauses 123 and 124(1)-(5)	The references to 'an ICN' in these clauses appear to be incorrect, as the definition of 'ICN' in Schedule 2 includes a negotiated notice.	Amend the clauses to clarify the reference. Alternatively, include a further sub-section in the definition in Schedule 2.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
95	Clause 124(6)	Clause 123(6) provides local governments five business days after making its decision to respond to the applicant accordingly.	Amend the period to 10 business days for consistency with other infrastructure charges timeframes and to provide an adequate period for local governments to respond.
96	Clause 127	This clause works in close collaboration with clause 129 (extra payment conditions) because a local government may impose a condition requiring the construction of non-identified trunk infrastructure, if the development is consistent with the planning assumptions in the LGIP. If additional infrastructure is required because the development is inconsistent with the planning assumptions (which can be as short as a 10-year planning horizon), additional costs are the mechanism to manage the impact on trunk infrastructure. It is strongly suggested that very careful consideration is given to the complexity and difficulty in applying clause 129, before this relationship is embedded in the conditioning requirements. It would be preferred if local governments could impose a condition requiring the construction of unidentified trunk infrastructure under clause 127, while retaining the ability to link to clause 128 (including additional costs) and other offsetting provisions.	That consideration is given to the comment and additional provisions be included to make clear that the component of the infrastructure serving, or required by, the development does not form part of the trunk infrastructure.
97	Clause 127(1)(b)	The term 'desired standard of service' (DSS) is not defined. The clause also does not form part of the definition of 'trunk infrastructure'. Without inclusion of this clause in the definition of trunk infrastructure it would limit the local government's ability to use infrastructure charges on projects specifically identified in the LGIP, and not on projects serving the same function and DSS as what is identified.	Define 'desired standard of service' to align with the LGIP and amend the definition of 'trunk infrastructure' in Schedule 2 to include reference to clause 127(1)(b).
98	Clause 127(2)	The reference to infrastructure being 'necessary to service the premises' is unclear. In some cases, the infrastructure is necessary for the functioning of the trunk infrastructure network, which services the premises; however, the individual item of trunk infrastructure may not directly service the premises.	Amend clause to clarify that the necessary infrastructure required, is necessary for the functioning of the trunk infrastructure network, which services the premises.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
99	Clause 127(5)	Additional criteria should be added to confirm that a conditioned item of infrastructure can perform both a trunk and non-trunk function. Alternately, the Bill should allow for a proportion of the establishment cost to exclude any non-trunk function from the value of the trunk infrastructure.	Amend clause to clarify that the necessary infrastructure conditions may also include a non-trunk component and can therefore be excluded from an establishment cost.
100	Clause 128(1)	The Bill does not make certain that local governments are not responsible for the full cost of infrastructure that is provided under clause 127 ('necessary infrastructure conditions'). This is unreasonable because most trunk infrastructure also serves a non-trunk function. Sometimes, this necessary infrastructure is required mostly for the purposes of the development proposal under assessment. For example, if an item of necessary infrastructure is being provided and 90% of the demand of that infrastructure comes from the subject premises, and only 10% of the demand relates to other premises, then the Bill requires the local government to fund 100% of the cost. As this places unreasonable funding obligations on the local government, it is recommended that the cost of the infrastructure be apportioned to the various users of that infrastructure.	Amend the clause to reflect that an offset or refund does not include the cost of infrastructure provided by the applicant that serves the subject premises.
101	Clause 128(2)	It is recommended that the offset requirements of this clause be amended in line with the comments made on clause 128(1) and should also operate in tandem with clause 115 (and associated guidelines), which govern the process for establishing the cost of the infrastructure for the purpose of an offset or refund.	Amend the clause to reflect that the proportion of an offset, for infrastructure provided by the applicant, takes into account the cost of demand placed on the infrastructure item by the developer and other users as well as the value of infrastructure charges collected for the infrastructure item.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
102	Clause 128(3)	In addition to the comment on clause 128(1) this clause is highly unreasonable and creates a significant financial impact for local governments because under the Bill the refunds must be funded from general revenue in addition to infrastructure charges revenue. This approach to calculating a refund further exacerbates inequity that already exists under the current capped charges framework. Therefore the local governments' liability to pay a refund should be capped at the infrastructure charges collected. This clause should operate in tandem with clause 115 and 136 (and associated guidelines), which govern the process for establishing the cost of the infrastructure for the purpose of an offset or refund.	Amend the clause to reflect that the proportion of a refund, for infrastructure provided by the applicant, takes into account the cost of demand placed on the infrastructure item by the developer and other users as well as the value of infrastructure charges collected for the infrastructure item.
103	Clauses 129 to 136	Extra payment conditions are a complex concept and should be carefully considered before being relied upon to maintain public safety when approving development. The proposed Bill, as drafted, does not allow local governments to impose conditions relating to the provision of trunk infrastructure when a development is inconsistent with the planning assumptions in the LGIP. This can have significant public health and safety implications. Refer to comments on clauses 127 and 144 for further details.	Amend references to 'trunk infrastructure' accordingly.
104	Clause 136	Calculating the establishment cost of infrastructure requires the method in the resolution to be used to determine the amount of the establishment cost for the infrastructure. The method a local government can place in their resolution is limited by the proposed Plan Making Rules to value infrastructure.	Local government concerns with the current Minister's Guideline be given due consideration prior to being transferred unamended into the proposed Statutory Instrument associated with the Planning Bill.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
105	Clause 137	Council does not support the conversion application process in the Bill as it: • creates an unknown financial liability for the local government • limits a local government's ability to prioritise delivery of planned trunk infrastructure. Applicants have an opportunity to make representations on the conditions of their approvals. Applicants also have appeal rights on that decision, if they do not believe they have been conditioned to provide non-trunk works.	That the conversion application process be removed from the Bill.
106	Clause 138 (2)	Council does not support the conversion application process in the Bill.	That the conversion application process be removed from the Bill.
107	Clause 140	Council does not support the conversion application process in the Bill.	That the conversion application process be removed from the Bill.
108	Clause 144	Extra payment conditions do not allow councils to impose conditions relating to the provision of infrastructure. This can create problems, as infrastructure that is required to ensure the safe functioning of infrastructure networks may not be in place before the approved use commences. Therefore, it is recommended that the provisions be amended to clarify that for a development inconsistent with the assumptions in the LGIP, a condition may be imposed to require infrastructure to be provided where necessary for the development under clause 144(b).	Recommend additional provision to non-trunk conditioning to support local governments in conditioning development that is inconsistent with the assumptions in the LGIP.

Comment No	Chapter/Part/Clause	Comment	Recommendation
Part 3 – Provisions for State infrastructure providers			
109	Clause 148(2)	Council does not support this provision because the capped infrastructure charges framework clearly places a limit on the costs councils can recover from development for development infrastructure, so any additional charges should first make up the shortfall created by that system. If the Government insists on retaining the ability to have local government levied infrastructure charges reimbursed, the following matters should be considered. • It will be extremely difficult under the capped infrastructure charges framework to calculate the proportion of infrastructure charges collected for the local infrastructure that has been replaced by the State infrastructure. • Queensland Government departments should work with local governments to ensure the infrastructure they provide is consistent with the DSS for the relevant network, that it serves a network's functions, and that it is consistent with the delivery schedule outlined in the planning assumptions and the Schedule of Works. • The State infrastructure satisfies the tests for necessary trunk infrastructure conditioning by a local government. • Reciprocal provisions are introduced for development in a PDA, which the Government levies a charge for (but are exempted from local government charges under 112(3) where Council is required to provide infrastructure made necessary by the PDA). This section is likely to impact Council, in particular, given the concentration of infrastructure of State significance in the Brisbane Local Government Area. The scope of potential financial consequences is uncertain.	Remove the provision. Amend the clause to limit the levied infrastructure charge payable and reciprocal provision introduced for PDA and other state development areas exempted from assessment and infrastructure charging in a local government area.
Part 4 – Infrastructure agreements			
110	Clause 150(2)	The requirement to advise in writing of the intent to enter into negotiation is unnecessary and increases the administrative burden of this provision.	Remove the requirement to advise in writing of the intent to enter into negotiation for an infrastructure agreement.
111	Clause 158	This clause specifically relates to the sale of public parks infrastructure or local community facilities. It requires the proceeds from a sale to be used for trunk infrastructure. Council considers this provision to be too broad, as the proceeds from the sale could be used in any infrastructure network. This clause should seek a 'no net loss' approach for the infrastructure network that sold the former asset (e.g. proceeds from the sale of public park infrastructure should be used for additional public park infrastructure).	That the provision be amended to require the net proceeds from the sale of lands be used to provide trunk infrastructure for the particular network from which the trust land has been disposed as a like-for-like replacement.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
Chapter 5 – Offences and enforcement			
Part 2 – Development Offences			
112	Clause 165(8)	The inclusion of definitions for 'emergency' and 'necessary' is supported. This will confine the use of the exemption to that for which it is intended. Also, this will remove the opportunity for unscrupulous persons to rely on this exemption, by carrying out development beyond what is reasonably required to address the public health and safety concerns posed by an emergency event or situation.	Note support.
Part 3 – Enforcement notices			
113	Clause 166(1)	This clause only permits a show cause notice to be issued to the person who an enforcement authority reasonably believes has committed, or is committing, a development offence. This appears to be consistent with the current requirement under section 588 of the SPA. This provision has the effect of limiting a property owner's liability for unapproved building works that took place on the premises under a predecessor's ownership, or by a tenant or other unknown person. The current owners should be responsible for ensuring all buildings and structures on the premises were constructed in accordance with the applicable legislation at that time.	Amend subsection (1) to: (1) This section applies if an enforcement authority— (a) reasonably believes a person has committed, or is committing, a development offence, and (b) is considering giving an enforcement notice for the offence to – (i) the person; or (ii) if the offence involves premises and the person is not the owner of the premises—the owner of the premises. Amend subsequent subsections to reflect this change.

Comment No	Chapter/Part/Clause	Comment	Recommendation
114	Clause 166(5)	Clause 166(5) provides for a range of matters for which a show cause notice does not need to be given first, before giving an enforcement notice under clause 166. Sub-clause (5)(a)(vii) only applies in circumstances where the development is causing environmental harm and does not provide for circumstances where there is reasonable likelihood of environmental harm being caused if the development continues. In such circumstances an enforcement authority could issue an enforcement notice without a show cause notice under clause 166(5)(b); however, if the giving of the notice was appealed, then, by virtue of clause 170(2), the enforcement notice would not be stayed as in the case for matters in clause 166(5)(a).	Amend subsection (5) (vii) to: development that the enforcement authority reasonably believes is causing, or is likely to cause, erosion, sedimentation or an environmental nuisance.
115	Clause 167(1)	This provision should clarify that an enforcement notice may be given to 'either or both' 'the person' and the 'owner of the premises'. Sub-clause (1) provides that an enforcement notice can be given to the owner of premises in circumstances where the owner is not the person who committed, or is committing the development offence. This appears to be consistent with the current provision in section 590(9) of the SPA, which only allows an assessing authority to give the enforcement notice to the current owner where an enforcement notice has also been given to the person who committed the offence. This provision has the effect of limiting a property owner's liability for unapproved building works that took place on the premises under a predecessor's ownership, or by a tenant or other unknown person. The current owner should be responsible for ensuring all buildings and structures on the premises were constructed in accordance with the applicable legislation at that time.	Amend the clause to read an enforcement notice to either or both.
Part 4 – Offence proceedings in Magistrates Court			
116	Clause 173 (1)	Council supports the additional time in which to start offence proceedings for matters mentioned in clause 173(i)(b)(ii) The additional six months will allow for the use of alternative administrative measures in the first instance without compromising Council's ability to commence proceedings should those measures be unsuccessful.	Note support.

Comment No	Chapter/Part/Clause	Comment	Recommendation
117	Clause 173 (1)	Council does not support the introduction of provisions that prevent Council from starting proceedings where the offence was committed over 2 years ago. Development offences are often not identified immediately and only come to Council's attention sometime after the actual offence takes place. This clause limits Council's ability to enforce the legislation if the offence is not identified early. An enforcement notice could still be issued to seek to remedy the offence, however the inability to commence a prosecution after two (2) years has the potential to remove an enforcement option and to effectively undermine the purpose of the Act.	Amend subsection (1) to: (1) Proceedings (offence proceedings) for an offence against this Act (a) are to be taken in a summary way; and (b) must start (i) within one year after the offence is committed; or (ii) within one year after the offence comes to the complainant's knowledge.
118	Clause 175	Council supports the new provisions that require enforcement orders to be recorded with the registrar of titles, and for the requirements of the enforcement order to be binding on both current and future owners and occupiers of premises. A change of ownership should not impact or adversely affect the outcome sought by the enforcement order. This will further strengthen the integrity of planning and development laws by removing the ability for a person to avoid their legislative obligations under an enforcement order by disposing of their conferred or implied rights to premises. However, issues may arise where a property is sold between the time an enforcement order is given by the court and the order is recorded by the registrar of titles. Advice is required about what recourse is envisaged for new owners in these circumstances. It is also requested that a timeframe be identified for recording the enforcement order on the register for the premises. Furthermore Council would support orders to apply for a development permit to attach to the premises and bind the owner, the owner's successors in title and any occupier of the premises.	Address the situation of new owner, along with identifying a timeframe for the enforcement order to be recorded on the register for the premises. Amend subsection (6) to: Subject to an order of the court, an enforcement order attaches to the premises and binds the owner, the owner's successors in title and any occupier of the premises.
Part 5 – Enforcement orders in P&E Court			
119	Clause 179	Council supports the new provisions that require enforcement orders to be recorded with the registrar of titles, and for the requirements of the enforcement order to bind both current and future owners and occupiers of premises.	Note support.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
Chapter 6 – Dispute resolution			
Part 4 – Appeals to P&E Court			
120	General comment	The Bill is disjointed in its reference to development tribunals. It appears to refer to 'Tribunals' in some cases and to 'Development Tribunals' in others.	Use consistent terminology to refer to development tribunals.
121	Clause 258(3)(d)	This provision enables a tribunal to hear two or more appeals or applications together; however, the provision enabling the P&E Court to do the same (currently section 494 of the SPA) has been omitted.	Include, in the appropriate location (in this Bill or the Planning and Environment Court Bill 2015) an equivalent power for the P&E Court.
Chapter 7 – Miscellaneous			
Part 2 – Taking or purchasing land for planning purposes			
122	Clause 262(1)(a)	The scope of this provision has been broadened by the replacement of the need to satisfy the 'strategic' outcomes in a planning scheme and with only the 'outcomes' which is strongly supported.	Note support.
Part 3 – Public access to documents			
123	Clause 263	As the details are contained in the draft Planning Regulation, any amendment to the obligations proposed in clause 263 should occur in consultation with local governments and allow for sufficient time for necessary business systems to be amended.	Consult with local governments prior amending these obligations.
124	Clause 264(3)(b) and (4)	Sub-clause (3)(b) outlines that a local government must give a standard certificate to an applicant within 10 business days and sub-clause (4) outlines that the certificate must include the content stated in a regulation. The draft Regulation (in schedule 31, section 2(1)(a)) states that a local government must 'include any material that accompanied the notice when it was given'. The timeframe for providing the standard certificate has not been increased to allow for the additional requirements set out in the draft Planning Regulation. The ability to meet the timeframe of the standard certificate will be greatly impacted by these additional requirements. This includes any material that accompanied ICNs for development applications. This requirement imposes large costs and impacts Council's ability to meet the timeframe, due to the logistics of scanning/digitising/vetting and collating the relevant material.	Amend the draft Planning Regulation to not require that the additional information be given, or alternatively, extend the timeframe for a standard certificate to 15 business days.
125	Clause 264(5)	This sub-clause provides for a person to make a claim for reasonable compensation for an error or omission in a planning and development certificate, if the claim is made within six years after the loss was first suffered. This limitation is supported.	Note support.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
Part 4 – Urban encroachment			
126	General comment	Council supports particular premises being protected from encroachment by sensitive uses, which may be inappropriate in proximity to such emissions. However, Council considers that the Industrial amenity overlay in *Brisbane City Plan 2014,* adequately protects existing uses from encroachment as well as protecting community health by discouraging intensification of sensitive uses in the overlay area. As such, Council seeks clarification about how the provisions in the Bill would work with the provisions of *Brisbane City Plan 2014*, including how an applicant's technical reports would be assessed in a consistent manner, what kind of peer review of technical reports there might be, and how the Minister's decisions would be shown to an appropriate level of transparency and balance for both particular premises and the broader community's amenity interests.	Clarify how the approach to urban encroachment to protect particular premises would work with provisions in *Brisbane City Plan 2014*.
127	Clause 267(13)(a)	A clarification note confirming that the noting of the registration of a premises on the local government's planning scheme is not considered an amendment to the planning scheme, should be included.	Include a provision which states 'the note is not an amendment of a planning scheme'.
Chapter 8 – Transitional provisions and repeal			
Part 1 – Transitional provisions for repeal of *Sustainable Planning Act 2009*			
128	General comment	A key concern is that the Bill does not include specific transitional provisions for how a planning scheme made under the SPA is to operate under the new Planning Act. Despite this, there are site specific provisions included in Chapter 8 for locations such as the Milton Brewery. Given the significance of planning schemes for development assessment, and the significant efforts and resources expended by local governments across Queensland to prepare and implement Queensland Planning Provisions (QPP) compliant planning schemes (including educating both internal and external stakeholders how to read and apply QPP compliant provisions), Council's position is that specific transitional provisions should identify how the planning schemes are transitioned under the new Act, to provide clarity and improve efficiency for administering planning schemes when the new Act commences. In addition provisions are required for planning schemes that will be made under different versions of the regulated requirements.	Amend the transitional provisions to adequately address planning schemes made under the SPA and QPP. Include provisions which address planning schemes, which will be made under different versions of the regulated requirements.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
129	Clause 285	This clause does not adequately address the transition of a PIP taken to be in effect as an LGIP under section 982 of the SPA. The general reference to a 'document' in effect continuing to have effect is not sufficient to transition a PIP taken to be an LGIP under the SPA. It is critical that the transitional provisions specifically address the transition of a PIP taken to be an LGIP in effect when the SPA is repealed, so that infrastructure conditioning of development and infrastructure charges remains unaffected. This clause also does not adequately address the transition of a superseded planning scheme for a planning scheme area.	Amend this clause or insert a new clause to deal specifically with the transition a PIP taken to be an LGIP under section 982 of the SPA, so that it continues to have effect under the new Act. Amend this clause to deal specifically with the transition of a superseded planning scheme.
130	Clause 285 and 288	The reference in column 2 of the table (on page 240 and 244 respectively) to 'an approval made under section 283(2)(b)' and 'an approval given under section 283(2)(b)' should read to 'to an approval referred to in section 283(2)(b)'.	Amend the clause to replace 'made under' with 'referred to in'.
131	Clause 286(2)	Council supports the inclusion of this provision. The rules and guidelines made by the Minister should also address the process for making or amending a statutory instrument that had started but not ended, before a new guideline has effect.	Note support. Address the transitional process for making or amending a statutory instrument under a guideline, in the Minister's Guidelines.
132	Clause 287	This clause does not address the transitional provisions that apply to an ICN (and any appeal about the notice) or an infrastructure agreement for a decision under the old Act. Clause 287(5) suggests that an ICN or infrastructure agreement would be made under the new Act, but this will create an ongoing tension and administrative burden to apply both the old Act and the new Act to matters relating to the decision.	Amend the clause to provide further clarity about how an ICN (and associated matters such as an appeal or infrastructure agreement) relating to an application decided under the old Act will be dealt with.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
133	Clause 288	Council is concerned that this clause is insufficient to transition requirements for code assessment where the assessment rules in the planning scheme, (which currently reflect the SPA and QPP) guide how assessment against the code is carried out. In preparing *Brisbane City Plan 2014*, decisions about appropriate levels of assessment were made and, depending on the nature of an assessment benchmark, these may be lost by the inflexibility of the provisions currently proposed. This is a significant issue for Council, particularly given the recent adoption of the planning scheme. If it can be confirmed that an assessment benchmark is equivalent to the assessment criteria currently determined through the planning scheme, these concerns may be addressed. For the purposes of the transitional arrangements in this section at least, the scope of code assessment should remain unchanged from that currently applicable under section 313 of the SPA. This could be achieved through clarification of the 'old name' for 'a code or other matter against which assessable development must be assessed'.	Reword clause 288 Table column 1 'a code, or other matter, against which assessable development must be assessed ' to read: 'for impact assessment - a code, or other matter, against which assessable development must be assessed as identified in section 314 of the SPA for code assessment - a code, or other matter, against which assessable development must be assessed as identified in section 313 of the SPA'.
134	Clause 290(a)	Council supports the appropriate elements of regional plans continuing to have statutory weight.	Ensure that the appropriate elements of the SPRPs within the *South East Queensland Regional Plan 2009 – 2031*, continue to have statutory effect upon the repeal of SPRPs.
135	Clause 301	This clause only applies to a local government's planning scheme that does not include a PIP or LGIP. It does not address the transitional requirements for those local government's planning schemes that did include a PIP before 4 July 2014.	Insert a new clause dealing with the transition of a local government's PIP to an LGIP, and the requirements (including timeframe) for those local governments to make an LGIP under the new Act.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
Schedule 1 - Appeals			
136	Table 2	Council supports the continuation of appeal rights against decisions made under local laws relating to the use of premises or the erection of a building or structure. Council would also support decisions being made under a local law, about the erection of buildings and structures, also falling within the tribunal's jurisdiction. This would be consistent with the tribunal's current and proposed jurisdiction to hear other appeals about building related matters. This would provide a more cost effective and efficient means through which Council and an appellant could have a disputed matter heard and addressed.	It is recommended that a new provision be inserted. Local Laws a) This section applies if a person is dissatisfied with a decision of a local government or the conditions applied under a local law about the erection of a building or other structure. b) The person may appeal to the tribunal against the decision or the conditions applied. c) The local government is the respondent.
Schedule 2 – Dictionary			
137	Definition 'Building'	The definition of 'building' should be the same as the *Building Act 1975*.	Amend the definition to refer to the meaning in the *Building Act 1975*.
138	Definition 'Decision Notice'	The Bill does not confine a decision notice to only notice given about a decision for a development application. This change in definition has flow on effects for determining what is a development approval: • The definition of development approval refers to development permit. • The definition of development permit refers to development application. • The definition of development application refers to development approval. Therefore the definitions are somewhat circular and will likely cause unintended issues in practice. For example, when determining when a development approval takes effect when it is given. Due to the circular nature of the definitions, one may never be entirely certain whether a document is a development approval.	All related definitions to be reviewed to remove ambiguity and to enable a person to determine what a development approval is and what it is not.
139	Definition 'Development condition'	This definition does not appear to contain all of the correct clauses of the Bill, including that there is no reference to the infrastructure conditions contained in chapter 8.	Review definition to include appropriate references to clauses in the Bill relating to infrastructure conditioning.

Comment No	Chapter/Part/Clause	Comment	Recommendation
140	Definition 'Development infrastructure' (a)(i)	The definitions of 'water cycle management' and 'public parks infrastructure' should be expanded as follows. (i)'Water cycle management' – in addition to 'stream managing', include 'stormwater management for stormwater quantity and quality' (iii)'Public parks infrastructure' – include 'barbeques, public toilets, dog off leash areas, skate facilities, fitness equipment, pontoons, boat ramps and fishing platforms'.	Amend the definitions.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
141	Definition 'Development infrastructure' (a) and (b)	The development infrastructure definition is unclear and requires review, it does not explain what development infrastructure is. It is recommended that the definition of 'development infrastructure' be amended to include works for local community infrastructure. Currently works are excluded from the definition of 'development infrastructure' and consequently by association 'trunk infrastructure', to which local governments under Part 2 subdivision 2 clause 141(1) must allocate levied infrastructure charges revenue. The limitations created by this definition reduce the usefulness of identifying local community facilities as trunk infrastructure in a LGIP. This becomes particularly relevant in infill situations, where more efficient use has to be made of land. Recent legislative amendments under the SPICOLAA, which are reflected in this Bill, limit the risk to the development industry of allowing both land and works for local community facilities to be included in the definition of 'development infrastructure'. The amendments dismiss any concerns that local governments are able to impose high quality community facilities upon a development that the local government itself would not be willing to provide. These amendments are as follows. • Part 2 section 127(3) - If the cost of providing conditioned infrastructure is more than the cost of the levied infrastructure charge then the local government must refund the applicant the difference. • Part 2 subdivision 2(1)(a) - local governments are limited to issuing ICNs for development approvals that are in accordance with a charge resolution that outlines adopted infrastructure charges as prescribed by regulation. • Part 2 division 4, subdivision 1 - if a local community facility is conditioned as non-trunk infrastructure, the applicant may apply to convert non-trunk infrastructure to trunk infrastructure. • That local governments must have consideration under *Statutory Guideline 03/14*, to have regard to not only the capital cost, but also the maintenance and operating costs of trunk infrastructure and that alignment of the scope, estimated cost and planned timing of proposed trunk infrastructure within a local government's Long Term Asset Management Plan and Long Term Financial Forecast as per the LGIP appointed reviewer checklist.	Review the definition to clearly explain what development infrastructure is. The definition of development infrastructure be amended as follows. (a) Both land and works for local community facilities.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
(continued)	Definition 'Development infrastructure' (a) and (b)	Local government's liability is limited by control over what projects are identified as trunk infrastructure in a LGIP and consideration of non-trunk to trunk conversion requests. The proposed amendment will provide local governments with greater control over the use of infrastructure charge revenue for local community facilities. Additionally it will reduce the barriers to bring a local community facility online and reduce the time a site remains vacant. Acquired land is often in a holding pattern until alternative sources of revenue can be allocated or mixed use outcomes negotiated. At a minimum, clarification is sought as to the reasoning behind the limitations imposed by the current definition, which was previously set under the *Integrated Planning Act 1997.* In addition it is recommended to remove the examples of local community facilities outlined in the 'development infrastructure' definition. This change removes confusion created by the limiting nature of identifying specific community facilities and will provide greater control to local governments to determine the types of uses that are deemed to be 'local community facilities' through their local planning instrument, that are able to be identified as trunk infrastructure.	Refer to first section of the recommendation for comment 143.
142	Definition 'Establishment Cost'	In part (a) of the definition it refers to the value of the existing trunk infrastructure. It is unclear what the function of this part of the definition is to be used for and further clarity is required, if the intent is for an existing establishment cost to be included in an LGIP, then the definition could be amended to reference that. It is also noted that not all land that forms part of the existing trunk network has been 'acquired' by Council. In part (b) of the definition it refers to the future trunk infrastructure. Given the parameters set by the Minister's guideline for inclusions in the LGIP and Resolution, it seems that the Bill definition should simply refer to the methodology identified in the local governments' resolutions.	Recommend that clarification be provided to the function of part a, and part b of the definition be amended to state 'the value of the infrastructure using the methodology identified in the resolution'.
143	Definition 'Infrastructure'	The definition as currently drafted states what is not included as infrastructure. Council strongly believes that a definition should positively state what constitutes the relevant definition.	Amend the definition accordingly.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
144	Definition 'land' or 'premises'	Section 71 of the Bill includes a change of terminology in sub-section (1)(a) in that where 'premises' now appears, 'land' was previously used. Council queries the intent of this change, particularly as 'land' is still used in sub-section (1)(b), with the result that an approval attaches to 'premises' and binds the owner, the owner's successor in title and any occupier of the 'land'. Consistent terminology is preferable, unless there is deliberate intent otherwise.	Clarify the intent to change the terminology of 'land' to 'premises' and why there are inconsistencies in the Bill.
145	Definition 'Local Government Infrastructure Plan'	A definition of a Transitional LGIP needs to be included or separately defined.	Include a definition for 'transitional LGIP' or amend the LGIP definition to include reference to 'transitional LGIP'.
146	Definition 'Non-trunk infrastructure'	The definition of non-trunk infrastructure does not explain what it is.	Amend the definition for clarity.
147	Definition 'Occupy'	The Bill defines 'occupier', in effect as a person apparently occupying a place. 'Occupy' is not separately defined. The definition is broad, and it may be of assistance if there is future opportunity for the courts to consider the nature of occupation rights.	Add a definition for 'occupy'.
148	Definition 'Operational work'	The operational work definition is less clear than the SPA definition with the exclusion of the categories of work. Removal and replacement with only 'works... in, on, over or under premises that materially affects premises or the use of premises', makes the definition too broad and will result in confusion as to what may or may not constitute operational work. For example, the definition may now be considered to exclude tidal works and vegetation removal.	Amend the definition for clarity.
149	Definition 'Public purpose'	A definition is required to give meaning to clause 303)(b).	Define 'public purpose'.
150	Definition 'PPI Index'	'PPI Index' should be 'PPI' (Producer Price Index).	Correct the reference to remove 'Index'.
151	Definition 'Priority Infrastructure Area' (PIA)	This definition does not state that a PIA is identified in a LGIP. The definition implies that if a development application is approved for certain uses then this becomes part of the PIA. This could also have implications for additional payment conditions being voided by the development approval imposing them.	Amend definition to refer to the PIA being identified in a LGIP.

Comment No.	Chapter/Part/Clause	Comment	Recommendation
152	Definition 'Trunk infrastructure'	This definition does not include clause 127(1)(b) being alternate infrastructure to a LGIP but delivering the same DSS.	Review definition.
153	Definition 'Use'	The definition of Use in the Bill includes 'any ancillary use of the premises'. The definition of Use in the SPA is 'in relation to premises, includes any use incidental to and necessarily associated with the use of the premises'. This subtle change has significant implications. It would be difficult to enforce the proposed definition, as it will be open to significantly greater subjectivity rather than the current definition, which has been considered by the P&E Court in a number of cases.	Amend the definition to adopt the SPA definition – 'use' in relation to premises, includes any use incidental to and necessarily associated with the use of the premises.
154	Definition 'Use or preservation covenant'	Clause 106 currently includes a definition of 'use or preservation covenant' which should be included in schedule 2.	Include definition of 'use or preservation covenant' in schedule 2.

Part 2 - Brisbane City Council's submission on the Planning (Consequential) and Other Legislation Amendment Bill 2015

Planning (Consequential) and Other Legislation Bill 2015

No.	Chapter/Part /Clause	Comment	Recommendation
Part 9 – Amendment of the *Building Act 1975*			
1.	Part 9 Clause 46	Amendment to s21(5) of the *Building Act 1975* The new 'relevant provisions' definition should also identify the ability for local governments to make local laws, local planning and local government resolutions under s32, that form part of the building assessment provisions as well as s33 (alternative provisions).	The definition of 'relevant provisions' should also include reference to s32 which allows local government to make local laws, local planning and resolutions.
2.	Part 9 Clause 76	Amendment to s84 of the *Building Act 1975* Section 84 currently only recognises development approvals granted by the local government. Clause 46 of the Planning Bill 2015 proposes to allow a 'chosen' assessment manager to assess development applications. Section 84(1)(a) should be amended to reflect the intent of the Planning Bill 2015 for a third party 'chosen' assessment manager.	Amend clause 76 to ensure that s84 of the *Building Act 1975* reflects the intent of the Planning Bill 2015.

Part 3 - Brisbane City Council's Submission on the Planning and Environment Court Bill 2015

Planning and Environment Court Bill 2015

Brisbane City Council (Council) supports the enactment of separate legislation to establish the Planning and Environment Court (P&E Court), through the Planning and Environment Court Bill 2015 (the Bill).

Clause 13 of the Bill provides for the Governor in Council to make rules for the P&E Court. Council supports the current *Planning and Environment Court Rules 2010* being retained.

Key provisions which are supported are Part 4, division 1 in relation to alternative dispute resolution, which provides a cost effective way for parties to resolve appeals, and Part 6 in relation to costs, which clarifies the operation of the costs provisions and the P&E Court's discretion to make an order for costs.