Submission No. 002
11.1.13

Your reference 11.1.6C
Our reference 9058499
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Infrastructure, Planning and Natural Resources Committee
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26 June 2015

To the Infrastructure, Planning and Natural Resources Committee

Re: Invitation to Make Submission
The Planning and Development (Planning for Prosperity) Bill 2015, The Planning and Development (Planning for Prosperity – Consequential Amendments) and Other Legislation Amendment Bill 2015 and the Planning and Development (Planning Court) Bill 2015

Ipswich City Council (Council) welcomes the opportunity to make a submission to the Infrastructure, Planning and Natural Resources Committee to inform your consideration of the policy to be given effect by the Planning Bills and the application of fundamental legislative principles to them.

To that end, please find attached hereto Council's submission for your consideration. The key matters outlined in the attached tabulated submission include:

- A request for further consultation with local government in the drafting of the proposed regulations, guidelines and rules.
- The legislation should be amended to state that the Minister must consult with local governments whose areas are wholly or partly covered by a proposed regional plan.
- In order to improve plan making efficiency, local governments should be able to delegate the power to undertake minor planning scheme amendments.
- The legislation should include specific provision to enable the extension of Temporary Local Planning Instruments (TLPIs).
- The compensation provisions should include a clear and concise statement that no compensation is payable where a planning scheme is amended to mitigate against the occurrence of natural disasters.

- Local governments should be able to categorise development as prohibited through their local planning schemes (which are able to be reviewed by DILGP and are subject to Ministerial approval).
- Local planning schemes should be the primary instruments to specify which forms of development require public notification.
- Changes to development applications, other than minor changes, should necessitate a new application.
- Default currency periods for Material Change of Use and Reconfiguration of a Lot applications should be consistent at four years.
- Default assessment benchmarks (similar to self-assessable code provisions) should be able to be applied in order to appropriately categorise 'accepted development'.
- The state maximum capped infrastructure charges should be inflation indexed on an annual basis.
- Infrastructure charges should apply to development pursuant to an Infrastructure Designation.
- Infrastructure Designations should be restricted only to state government agencies and infrastructure providers and not extended to private enterprises and non-government organisations.
- There is a general lack of understanding by the Magistrates Court of planning and development enforcement matters. Accordingly, the Planning and Environment Court should be the enforcement jurisdiction.
- The proposed use of the Planning and Environment Court, ADR Registrar and Building and Dispute Resolution Committees to hear planning and development appeals is disjointed and confusing. These jurisdictions should be properly integrated and prioritised under the umbrella of the proposed Planning and Development (Planning Court) Bill.

Council appreciates the opportunity to formally review the proposed legislation and to be involved in these important planning issues. Similarly Council appreciates and supports continued involvement in workshops, focus groups and other engagement opportunities throughout the planning reform process. If the Committee wishes to discuss any of the matters outlined in Council's submission please do not hesitate to contact Council's Development Planning Manager, [redacted]

Yours sincerely

John Adams
CITY PLANNER
Encl.

Planning and Development (Planning for Prosperity) Bill 2015 / Planning and Development (Planning Court) Bill 2015

Ipswich City Council Feedback

Description	Feedback Comments
Regulatory Framework	It is difficult to understand the implications of the timeframes detailed in the Bill when the contents of the Regulation or Development Rules are unknown. It is also difficult to put the whole development assessment process in context without knowing the timeframes that are detailed in the Regulation or Development Assessment Rules (eg. Chapter 2, Part 4, section 24(6)) and Plan Making Guidelines. Meaningful consultation should continue with local government to provide key input to the detailed drafting of the regulations, guidelines and rules.
Chapter 2 – Planning	**Part 1, section 7(4):** The hierarchy of legislation is broadly described relative to the extent of an inconsistency as (a) a State planning policy (SPP) has precedence over a Regional Plan (RP) or Local planning instrument (LPI); (b) a RP has precedence over a LPI; (c) a Planning scheme (PS) has precedence over a Planning scheme policy (PSP); and (d) a Temporary Local Planning Instrument (TLPI) has precedence over a PSP. It is suggested that: **Part 1, section 7(4) (a):** include Temporary State Planning Policy (TSPP). **Part 1, section 7(4) (c):** state that a Regulation applies instead of a local planning instrument (LPI). **Part 1, section 7(4) (d):** state that a TLPI applies instead of a planning scheme and a PSP. **Part 1, sections 7(4) (c) & (d):** renumber. **Part 2, section 9:** The provisions provide for the Minister to make minor amendments to State planning instruments without public consultation. Clarity provided as to what constitutes a minor amendment in regulation or guidance is supported. Additionally, whilst the requirement for a public notice regarding the minor amendment is an appropriate prescription for inclusion in the legislation, further advice, particularly to local government of when changes have been made, should be provided for although this too would be appropriate to be specified in the regulation or guidance. **Part 2, section 10:** Whilst the requirement for a public notice regarding the commencement of a Temporary state planning policy is an appropriate prescription for inclusion in the legislation, further advice, particularly to local government regarding commencement of a Temporary state planning policy should be provided. It is suggested that a clause similar to 11(3) requiring the Minister to give a copy of the public notice to each affected local government be included. **Part 2, section 12:** It is noted that the region, consultation process with local government and interest groups, membership of the regional planning committee and rules of the committee are vested in the Minister. In particular it is noted that it is currently stated "The Minister must consult the local governments and interest groups that the Minister considers appropriate" which implies that consultation with local governments is discretionary. This clause should be amended to require that the Minister must consult with local governments where their areas are either wholly or partially located within the area covered by the regional plan. **Part 3, section 16:** Considering the provisions of s15 covering guidelines and rules it is believed that this section is unnecessary and will introduce additional steps and uncertainty in the plan making process. It is suggest that s16(1) to (8) inclusive be replaced with the following provision: *(1) If a local government proposes to make a planning scheme, the local government must make the planning scheme by following the process set out in the Minister's rules.* To support this provision it is suggested that the Minster's rules should clearly differentiate the process for making a planning scheme from those for making an amendment to a planning scheme. To support this provision it is suggested that the Minister's rules should clearly differentiate the process for making a planning scheme from those for making an amendment to a planning scheme. **Part 3, section 19:** It is suggested that a new section 19(9) be included to provide for the 'extension' of a TLPI to read: *(8) the chief executive may approve a request from a local government for an extension of a TLPI for up to a further two (2) years, where :* *(a) the local government has progressed an amendment to the local planning instrument as set out in section 18 or there is a valid reason for non-progression;* *(b) the lapsing would result in exposure to a continuing significant risk of serious adverse cultural, economic, environmental or social considerations happening in the local government's planning scheme area; and* *(c) the extension would not adversely affect State interests.* **Part 3, section 22:** The provisions should only apply to the functions normally ascribed to the good governance of a local government. Where the action is external to or reasonably described as beyond the good governance of the local government and is an expense reasonably incurred by the local government in taking the action, the expense should be able to be recovered from the State.

	Part 4, section 23: It is unclear how the superseded planning scheme provisions should be applied where a temporary local planning instrument has come into effect and suspends and affects the provisions of the planning scheme which are being relied upon. It is suggested that additional provisions are included to clarify this matter. In addition, it suggested that the following provisions be included: a new section 23(2)(c) be inserted after section 23(2)(b); *(c) to avoid any doubt, it is declared that where an amended planning scheme or planning scheme policy are referenced in a request to apply superseded planning scheme, the request must only relate to those sections of the planning scheme or planning scheme policy that have been amended, not the whole of the planning scheme or planning scheme policy.* a new section s23(9)(c) be inserted after s23(9)(b): *(c) the superseded planning scheme applies for carrying out the development if—* *(i) for development that is a material change of use—the first change of use started within 4 years after the person is given, or was entitled to be given, notice of the decision under this division; or* *(ii) for development that is reconfiguring a lot—a plan for the reconfiguration is given to the local government within 2 years after the person is given, or was entitled to be given, notice of the decision under this division; or* *(iii) for other development—the development is substantially started within 2 years after the person is given, or was entitled to be given, notice of the decision under this division.* **Part 5, section 24(6):** As the term gross floor area is defined in the Queensland planning provisions, it is suggested that the whole of section 24(6) be deleted if the intention is to retain such definitions under the new Act. If this is the case, there is also a need to ensure that there is consistency with the balance of section 24 e.g. that the term and definition yield be included in the standard administrative definitions. **Part 5, section 25:** This section should be worded to provide a clear and succinct statement that there is no compensation payable where a planning scheme is amended to mitigate against the occurrence of natural disasters. **Part 6, Designation of Land for Development Infrastructure:** Infrastructure Designations should be restricted only to state government agencies and infrastructure providers and not extended to private enterprises and non-government organisations. **Part 6, section 31(4):** Where the infrastructure designation is inconsistent with the Planning Scheme intent for the premises/area a longer public notification period should be applicable e.g. 30 business days, not 15 business days. **Part 6, section 36:** For a local government to note a designation in the planning scheme, full information is required to be provided. It is not clear whether the notice will contain sufficient information for this to occur i.e. will contain all the information needed to meet the requirements of section 36(2). It is suggested that it should be made clear that either the notice must contain the information required to be able to include the note in the planning scheme or additional provisions included in the Bill to state how this information is to be provided to the local government.
Chapter 3 – Development Assessment	**Part 3, section 38(3):** Prohibition should be expanded to include the ability for Local Governments to categorise development as prohibited. **Part 3, section 41:** It is considered that there would be benefit in allowing referral agencies to be able to issue exemption certificates as well as assessment managers. Are there likely to be further rules around the types of development for which an exemption certificate can be issued? **Part 3, section 43(2):** Without the regulation, we are unable to determine whether this section is satisfactory. Subject to the provisions in relation to Ministerial powers, Council does not support planning related development applications being made by an assessment manger other than Council. **Part 3, section 43 (3):** This is unclear, if a DA straddles the boundaries of two local governments, who determines who is to assess the application? It is suggested that the local government with the majority of the development application should assess the application with the adjoining local government as a referral agency (unless otherwise agreed by the relevant local governments). **Part 3, section 48 (2):** In certain circumstances it may be important to notify a particular type of development that would not require notification in other circumstances. For example, a dual occupancy development application might reasonably be notified in a character housing area, where in a standard residential area notification would not be warranted. As such, Council would not support a regulation prescribing that a certain type of development could not require notification. **Part 3, section 48 (6):** This section should be amended to refer to properly made submissions only. **Part 3, section 56:** Without viewing the assessment benchmarks it is difficult to comment on whether this section is appropriate. **Part 4, section 60(1) (e):** Without the regulation, it is unclear whether this section in relation to a chosen assessment manager other than Council is satisfactory. Subject to the provisions in relation to Ministerial powers, Council does not support planning related development assessments being undertaken by an assessment manger other than Council. **Part 4, section 60(3):** What is meant by 'all material prescribed'? Further clarification is required. **Part 4, section 61 (6)**: Does this include the issuing of an Infrastructure charges notice? **Part 5, section 63(3):** It is considered that in certain circumstances there is merit in the applicant being given an option to pay a monetary contribution for non-trunk works in lieu of

	construction where it is more financially efficient and practical for such works to be undertaken at a larger scale and future date by the assessment manager or referral agency. **Part 5, section 65:** It would be important for the development assessment rules to undergo proper consultation with local governments as it is difficult to comment on this section without viewing the proposed rules. **Part 6, section 73 (2) & (3):** What if the assessment manager agrees with some representations, and disagrees with others. This section is written in a way that it is simply a yes or no, but it is not in most cases. **Part 6, section 75 (3) (c):** It is considered that this section should be amended to specifically reference submitter appeals, rather than a submission being made for the application. A positive submission could have been made for the application in the notification stage and the application later appealed and decided by the court. This section would require the court to be the assessment manager for any future change applications owing to this previous submission. Furthermore, it should be clarified who the assessment manager is for a consent order where there were properly made submissions. **Part 6, section 78 :** The Assessment Manager should have the opportunity to request information. Suggest wording similar to section 137(3) and (4). **Part 6 section 79**: If a proposed change does not meet the 'minor change' criteria a new application ought to be submitted. It is unclear what the benefits are to including the ability to make a change application that is not a minor change. It would be less confusing and more transparent if it were treated as a new application, particularly owing to the substantial changes to conditions that would potentially need to be made. **Part 6, section 80(2)(a):** Why is the day the application was made relevant or necessary to include in a decision notice? Recommend deletion. **Part 6, section 82(1):** Consistent currency periods of four (4) years should apply to material change of use and reconfiguring a lot development applications to reduce confusion. What is the basis of lengthening the default currency period for material change of use and reconfiguring a lot without operational works development applications? Section (ii) should deal clearly with staged reconfiguring a lot development applications and when such applications lapse (i.e. if the first stage is undertaken but future stages are not, do those stages lapse or is the application kept alive indefinitely due to the fact that the plan for stage 1 of the reconfiguration has been given to the local government within the 4 year currency period). Section (ii) should also use the terminology 'plan of subdivision' to reduce confusion. The terminology for the period of approvals has been changed from 'currency period' to 'relevant period' and the act proposes to now amend this back to 'currency period'. It is suggested that the terminology remain as 'relevant period' to reduce confusion. **Part 6, section 82(1)(c):** This section should be amended to be absolutely certain to reduce conflict and confusion in practice. It is suggested that the section be amended to require the development to be wholly completed within the currency period. Alternatively, 'substantially start' should be clearly defined in the act. **Part 6, section 85(1)(c):** Suggested that this section is more appropriately placed with section 82. Further, the 5 year period should be changed to be consistent with other development approvals. **General Notes:** No apparent provision is made in the draft Bill for the equivalent of self-assessable development as provided for under SPA. Consequently, it would appear that matters currently regulated through self-assessable development under SPA will need to be categorised as either accepted or assessable development. The removal of an equivalent to self-assessable development removes some of the existing flexibility in regulating development on a risk basis. Self-assessable development is considered to be a useful mechanism for streamlining the assessment process for applications where there was some risk but this could be mitigated through compliance with the self-assessable criteria/ benchmarks instead of triggering the need for a development application to be made. This gave certainty to not only the proponent but the community about the achievement of pre-determined benchmarks or performance of particular uses. Similar benchmarks will need to be specified for accepted development and, where non compliance occurs, the development should default to standard assessment. **Prohibited Development:** Consideration should be given to permitting prohibition under a planning scheme. The value of this is certainty for the community and for the development industry and in the context of the balance of changes to assessment types, this would seem to be in line with the government's intent on letting local governments deal with local issues and having regard to a risk based approach. The Queensland Government can still scrutinise the incorporation of prohibition in the planning schemes as part of the review process to ensure that the prohibition is in the best overall interest (balancing state and local issues). Obviously this issue is dependent on the content of any regulation and the extent of prohibition proposed, but currently it appears that prohibition only applies to matters of conflict with state interest. As an example, constrained land may be limited to the point where a range of uses may be quite justifiably prohibited (i.e. multi residential use in a severe flood or geotechnical constraint). Furthermore, there may be particular types of industrial development that are simply not suitable in any residential context and therefore prohibition may be the reasonable position. By adopting this approach it would avoid the pursuit of development in circumstances that are clearly inconsistent with the planning intent and where there is no prospect of success and which diverts resources and time unnecessarily from the development system (and the Court system) even including in dealing with development enquiries and pre-lodgement discussions. Further to this issue, it would make sense that prohibition could be an appropriate tool for variation applications.
Chapter 4 – Infrastructure	**Part 2, section 107(2) and (3)**: States that the minister may change the amount of a maximum adopted charge and how the amount of any increase is to be calculated. Whether to apply an increase to the charge is therefore discretionary which introduces uncertainty for local government from a financial sustainability perspective. Provision should be made for an indexation of the maximum adopted charge to be applied on an annual basis i.e. the discretion is removed. **Part 2, section 108(2)(c)(iii)**: States that a power to adopt charges by resolution does not extend to development under a designation. The term designation covers a potentially

	broad spectrum of uses and it is considered that a use which places a demand on a trunk infrastructure network should pay an infrastructure charge. It is suggested that clause 118(2)(iii) should be deleted. **Part 2, section 115**:The section is not clear in terms of how far back in time the local government should go in determining whether there was a previous use (i.e. one that is not existing). Consideration should be given to placing a time limit on this. This should be aligned with the first enactment of legislation or other statutory requirements when infrastructure provision was first required on the basis that such previous uses have made a prior contribution. **Part 2, section 118:** Provides that the local government and recipient of an infrastructure charges notice may agree alternative payment of the charge to section 117 or provision of infrastructure instead of paying the levied charge. The section would benefit from inclusion of a reference to section 147 to ensure it is clear the agreement must be in the form of an infrastructure agreement. **Part 2, section 125**: Section 125 should also deem "compliance with necessary or reasonable requirements" where the LGIP identifies adequate infrastructure services to the subject premises (i.e. in accordance with section 133). The current provisions in section 125 do not properly reflect that where the LGIP has identified trunk infrastructure and a condition is imposed on that basis that it meets the "necessary or reasonable" requirements. **Part 2, section 137(1):** '30 business days' is a short timeframe for the assessment of such significant application types. **Part 2, section 138(1):** 'As soon as practicable' is relatively open given timeframes are specified to issue other decision notices. A specific timeframe should be inserted, such as 5 business days. **Part 2, section 139(3):** It is unclear if this section requires the issuing of a new Decision Notice and if the associated rules of issuing a decision notice apply? These matters should be clarified.
Chapter 5 – Offences and Enforcement	**General:** There is a general lack of understanding by the Magistrates Court of planning and development enforcement matters. Accordingly, the Planning and Environment Court should be the enforcement jurisdiction. **Part 3, section 164(5):** This section gives a better explanation than is given under SPA.
Chapter 7 – Miscellaneous	**Part 1, section 213(2):** How is the word "effected" defined?
Chapter 8 –Transitional Provisions and Repeal	**Part 2, section 245(c):** For self-assessable development that does not comply with all applicable codes, what type of 'assessable development' does this type of use become (i.e. standard assessment?) **Part 2, section 247:** It needs to be considered that this section allows for the continuation of the State Planning Regulatory Provision (Adopted Charges) July 2012.
Planning and Development (Planning Court) Bill 2015	**General:** The proposed use of the Planning and Environment Court, the ADR Registrar and Building and Dispute Resolution Committees to hear planning and development appeals is disjointed and confusing. These jurisdictions should be properly integrated and prioritised under the umbrella of the Planning and Environment Court legislation. **Part 5, Division 1, section 46:** This appears to be a repeat of Part 4, Division 4, section 43 (Nature of appeal in general). Is it necessary to have it repeated?