Moreton Bay
Regional Council

Phone: (07) 5433 2511
Fax: (07) 3205 0599
Our Ref: A12113297
Date: 13 July 2015

Submission No. 009
11.1.13

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

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

Dear Sir/Madam

Submission on the Suite of Planning and Development Bills

Moreton Bay Regional Council (Council) appreciates the opportunity to make a submission on the suite of Planning and Development Bills comprising 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.

We note the committee's resolution to defer consideration of the Planning Bills pending advice from the Committee of the Legislative Assembly. We also note that no further advice has been given regarding the submission process. In this regard, we provide the following submission by the due date, noting that the Inquiry's timeline is under review.

As a local government, any Act resulting from the subsequent adoption of these Bills would have a significant impact on Council's day-to-day operations especially given the evolution of our new draft planning scheme for our region. Council has therefore taken a key interest in the evolution of the Planning and Development (Planning for Prosperity) Bill 2015 from its inception as the draft Bill that was released by the former government for targeted consultation. A detailed submission on the consultation draft of the proposed Bill was made to the former Deputy Premier and Minister for State Development, Infrastructure and Planning on 26 September 2014. For the committee's reference we attach a copy of this submission to this submission.

We note that the Planning and Development (Planning for Prosperity) Bill 2015 is very similar to the Planning and Development Bill that was introduced into the previous Parliament on 25 November 2014. As an overall observation, Council wishes to make it clear that it is very difficult to assess a Bill which is heavily reliant on a Regulation and other statutory guidelines/rules to outline the full detail, unless the entire package is made available for assessment.

The fact that the Bill is a private member's Bill complicates the issue even further as only the government can produce Regulations and statutory guidelines/rules. All of these documents need to sit together seamlessly if they are to be an effective replacement for the *Sustainable Planning Act 2009* (SPA). It is therefore very difficult for Council to make an informed submission when the operation and the effect of the Bill in practice is subject to detail not yet available.

Council is keen to participate in the discussion regarding planning reform in Queensland. We are supportive of the committee process and would therefore welcome the opportunity to attend a hearing once the committee has resolved the inquiry timeline.

Again, we thank you for the opportunity to provide Council's submission on the suite of Planning and Development Bills. Should you require any further information please contact Kate Isles, Acting Manager, Strategic Planning [redacted]

Yours faithfully

Daryl Hitzman
Chief Executive Officer

Encl: *Submission to Consultation Draft of Planning and Development Bill 26 September 2014*

Moreton Bay Regional Council

Enquiries: Chris Warren
Director, Strategic & Development
Direct Phone: 07 3205 0555
Direct Fax: 07 5433 2193
Date: 26 September 2014

Honourable Jeff Seeney MP
Deputy Premier and Minister for State Development, Infrastructure and Planning
Department of State Development, Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002

Via email: bestplanning@dsdip.qld.gov.au

Dear Deputy Premier,

Re: Draft Planning and Development Bill 2014
Moreton Bay Regional Council Submission

Moreton Bay Region is one of the fastest developing places in Australia. Situated between Brisbane and the Sunshine Coast, our Region is one of diverse communities and landscapes. It covers coastal settlements including Redcliffe, Beachmere and Bribie Island, rural townships and mountain villages like Mt Mee, Woodford, Dayboro and Mt Glorious, and rapidly expanding urban centres like North Lakes, Morayfield, Brendale and Narangba.

The Moreton Bay Region is one of the fastest growing population areas in Australia. Our Region is expected to grow to a population of 467,860 persons by 2021 at a rate of growth outstripping that of South-East Queensland.

The Moreton Bay Region's proximity to Brisbane and major transport infrastructure make it easy to access, a benefit that has attracted numerous new residents and businesses. The region's strong economic performance provides an array of business and investment opportunities.

Although fundamentally sound, the current *Sustainable Planning Act 2009* (the SPA) is due for a change. The current framework results in a degree of uncertainty between process and outcomes – it lacks the capacity to help deliver strategic outcomes. An improved planning framework will help us balance the coordination of infrastructure delivery, the management of urban growth, ensuring land availability, housing affordability, environmental protection, and being responsive to coastal management and climate change.

The development and construction industry employs 10% of our Region's workforce – trailing only the health and retail sectors. We have over 6,500 construction and construction related businesses. We processed in excess of 2,250 development applications in 2013-14, endorsing over 3,100 new lots in this same period.

Our Regional economy is built upon achieving high quality, efficient and sustainable development outcomes, and our Council commends the State Government – through the Department of State Development, Infrastructure and Planning – for initiating this much needed and significant reform to Queensland's planning system.

Our Review of the Draft Planning and Development Bill 2014

We thank the Government for the opportunity provided to development and construction sector stakeholders through this consultation period. Many of the proposed amendments in the *Draft Planning and Development Bill 2014* are welcomed improvements to Queensland's planning framework, and while Council recognises that the necessary associated regulation, guidelines or rules to the *Draft Planning and Development Bill 2014* are still to follow, we are pleased to provide the following comments on the *Draft Planning and Development Bill 2014* for your consideration.

1. Preliminary (Chapter 1)

(1) **Section 5** stipulates that "*...the Commonwealth or a State cannot be prosecuted for an offence under this Act*". That protection should be extended to also cover local government.

2. Planning (Chapter 2)

(2) **Section 9** deals with the making and amending of State planning instruments and sets limits on the time during which submissions may be made. The provision sets the start time for the period for lodgement of submissions as the date of the gazette notice of the Minister's intent to make or amend a State planning instrument.

However, the public notice inviting the lodgement of submissions is, by definition, not confined to a gazette notice. As such, the start time for lodgement of submissions should be taken from the last of the notices described in the definition of the term "public notice" as there can be significant delays between the posting of the first notice and the last. This same philosophy should also be carried through to the "time of affect" prescribed in **sections 9(5)** and **10(3)**.

(3) **Sections 9(5)** and **10(3)** set the time that a State planning instrument comes into effect by reference to either the day that a public notice is published or a later day stated in the instrument itself. The public notice itself should also have the power to set the "time of affect" of the State planning instrument and that needs to be built into **sections 9(5)** and **10(3)**. This same concern also applies to **section 11(4)** on temporary State planning policies, **section 17(9)** on the making of planning schemes, **section 18(9)** on amending planning schemes, **19(3)** on making or amending planning scheme policies and **20(6)** on making or amending TLPIs.

(4) **Section 9** should include an obligation on the Minister to respond to each submitter on how their submission has been dealt with and to readvertise the proposal if a significant amendment is made prior to actual adoption of the instrument. Such an obligation would increase the level of transparency and mirror the process prescribed for local planning instruments.

(5) **Section 9(6)** indicates that "*...if the Minister decides not to make the instrument, the Minister must publish the decision in a gazette notice*". Notification requirements for a decision not to proceed should be the same as the notification requirements for adoption.

(6) **Section 11** (making temporary State planning policies) needs to include a requirement that each affected local government be given a copy of the public notice of adoption of a temporary State planning policy and a copy of the policy itself. This would reflect the process applying to other State planning instruments (referred to in **section 9**).

(7) **Section 17** (making planning schemes) prescribes that a local government must make its planning scheme by following the process stated in a notice issued by the chief executive.

While the ability for negotiation is a positive initiative, there also needs to be a default process on which the negotiations between the chief executive and each local government can be based (falls outside the scope of the guidelines prepared by the Minister under section 16). Some limits also need to be set on the timing and content of any unilaterally generated amendments to the notice issued by the chief executive.

(8) **Section 18(4)** (amending planning schemes) allows the chief executive to amend a notice on the process to be used for the amendment of a planning scheme after consulting with the affected local government. The amendment should also be subject to obtaining the agreement of the local government, not just undertaking consultation (the ability to issue a unilateral direction should be limited to the Minister).

(9) The requirement under **section 19(3)** for planning scheme policies (and amendments to policies) to be adopted by gazette notice seems unnecessarily onerous given the limited scope and content permitted for a PSP.

This same concern also applies to the repeal of PSPs under **section 21(4)**.

(10) **Section 20** allows for a Temporary Local Planning Instrument (TLPI) to be amended, however, it does not appear that the amendment can be one which extends its operation.

The draft Bill does not prohibit a TLPI being made again (as is the current practice under the SPA), which means the TLPI can effectively be re-made. It would be advantageous to allow for the amending of the TLPI to include amendments which provide for the extension of its operation.

(11) By their very nature, TLPI's are statutory instruments that can be introduced quickly to suspend or otherwise affect the operation of a planning scheme in order to protect a local authority from potential adverse impacts.

In this respect, Council encourages the Department to consider the possibility of implementing an 'automatic operation' of a TLPI prior to Ministerial approval - in effect creating an 'interim TLPI' yet the provisions would have the immediate force intended of a TLPI.

(12) **Section 25** (the part applying to Planning changes that adversely affect land values) has been drafted in the draft Bill with a "possible alternative provision for paragraph (e)(i)" for changes made to reduce the risk to persons or property from natural processes, including flooding, bushfires, landslides, or coastal erosion; and being changes made in good faith, having regard to an assessment of the risk.

The "possible alternative provision for paragraph (e)(i)" of section 25(4) is the preferred model for section 25.

3. Development Assessment (Chapter 3)

(13) **Section 40** allows for local government to provide an owner with an interest in land an 'exemption certificate' – that is, a notice which allows for assessable development to occur without the need for that person to obtain a development approval (provided that the development were carried out to the extent stated in the exemption certificate).

Council supports the 'exemption certificate' concept, and the opportunities of bringing certain types of low risk and "minor" development to fruition without the need for a full development assessment.

(14) That said, the term "*owner of an interest in land*" as referred to in **section 40(1)** needs to be defined for ease of interpreting who may be entitled to seek an exemption certificate of Council.

(15) **Section 40(3)** gives the local government ('the entity' that issued an "exemption certificate") the power to withdraw the certificate. The circumstances and criteria to be used in making a decision on whether or not to withdraw an "exemption certificate" needs to be prescribed for clarity and transparency.

(16) **Section 40(4)** should make clear that the development may only be completed if it is consistent with the proposal on which the "exemption certificate" was based.

(17) There will be circumstances in which the local government may choose to give an exemption certificate, subject to certain considerations. **Section 40** should provide clarity in relation to whether an exemption certificate may be given subject to conditions, whether an infrastructure charge could be collected as part of an exemption certificate, and whether a right of review applies to give or withdraw an exemption certificate.

(18) The draft Bill provides for local government to identify a separate entity to fulfil the role of an 'alternative' assessment manager (**section 42(3)(c)**) – an opportunity supported by Council on the proviso that these are "chosen" assessment managers, are able to be nominated by Council at Council's discretion, and are not entities prescribed as being assessment managers by the Minister through a regulation.

(19) **Section 43(7)** (meaning of development approval) indicates that "...*a preliminary approval prevails over a development permit for development to the extent of any inconsistency*". Presumably, this is intended to apply solely to development permits which rely on earlier preliminary approvals for their effect, but that is not made clear in the current wording of the provision.

(20) The wording of **section 52(2)(a)** (under Referral agency assessment) needs to be expanded to make it clear that the obligation imposed by this provision only applies to the matters that are prescribed as mandatory requirements in a Regulation.

Similarly, the wording of **section 52(2)(b)** needs to be expanded to make it clear that it only applies to requirements listed as optional in a Regulation. Under the current wording, (a) conflicts with (b).

(21) Clauses (a), (b) and (c) within **sections 53(1)** and **53(2)** should make clear that these are listed as alternatives.

(22) **Section 60(3)** (deciding development applications generally) imposes an obligation on the assessment manager to approve a development application which is subject to "standard assessment" and does not comply with the assessment benchmarks, but where compliance can be achieved by "...lawfully imposing development conditions...".

Some practical limit needs to be set on the extent of conditions required to achieve compliance under this obligation. The current wording mirrors a requirement that appeared in the original version of the *Integrated Planning Act 1997* (IPA), but which was later modified due to it being an impractical obligation.

(23) It is noted from the definition of the term "variation approval" that it can only take the form of a preliminary approval. However, it would be more beneficial to include that limitation in **section 62** itself.

(24) **Section 64** (compliance with referral agency response) needs to be expanded to clarify

that the obligations imposed by that section only apply to the extent that the referral agency response does not exceed the limits imposed by Regulation (under section 53(7)), for the type of referral agency involved.

(25) **Section 66(1)(c)** (restriction on decision if owners consent required) requires that where owners consent is required for a development application, and such consent has not been supplied with the application, that the development approval include conditions requiring that the development not start until the land owner has agreed to the development starting or has given an easement for the purpose of carrying out the development.

The potential 'deferring' of owners consent is not seen as being beneficial on balance for all stakeholders. Council raises concern of development applications being made over land without the land owners knowledge (let alone consent), and potentially having to issue a decision notice approving the development against the wishes of that land owner.

Notwithstanding **section 66(2)** that such a condition would be taken to satisfy the tests of 'reasonable and relevant', the imposing and enforcing of such conditions is impractical. It unreasonable for local government to have the additional burden of ensuring compliance with conditions dealing with owner's consent.

(26) It would be beneficial if a note was attached to **section 70(3)(f)** (prohibited conditions) indicating that the provision does not prevent an assessment manager from including an advice statement that a separate approval may be required under the SEQ Water Act.

(27) **Section 76(1)(a)** (being a variation approval) needs to include a reference to any "referral agency having advice authority only" as those referral agencies have rights of appeal to the Planning and Environment Court by virtue of Schedule 1.

(28) At **section 76(1)(b)**, it would be beneficial to have a stated timeframe associated with the ending of the appeal period afforded to an eligible entity. The current drafting, which closely follows the wording of the SPA, retains the uncertainty as to when a development approval may take effect because the ending of the eligible entity's appeal period (section 76(1)(b)(ii)) is not immediately measurable or apparent.

(29) The wording of **section 80(2)** (deciding or changing a development approval) needs to be modified to make it clear that it only applies to those instances where the assessment manager does not agree with *any or some* of the representations made by the applicant.

A similar modification also needs to be made to **section 80(3)** to clarify that the requirement to give a negotiated decision notice applies in those instances where the assessment manager agrees with *some or all* of the representations.

Currently, the drafting of section 80 only allows the assessment manager to agree with all or none of the representations.

(30) **Sections 81** to **86** relate to ways an approval may be changed after the appeal period. **Section 82(3)** (making a change application) indicates that a person seeking a change to an approval given by the Planning and Environment Court should be seeking the change through the assessment manager instead of the Court unless there were properly made submissions for the original application.

Unless the original approval resulted from a "consent order", the change should be sought through the Court regardless of whether or not submissions were lodged.

Also, this subsection should require that changes to approvals issued by the Building and

Development Dispute Resolution Committee be sought through that Committee rather than through the assessment manager.

Note - **Section 87(1)** should be similarly amended to include reference to the Building and Development Dispute Resolution Committee. These same concerns also apply to the provisions dealing with "extension applications".

(31) **Section 84(2)** outlines the critical aspects that must be satisfied for a change to a development approval to constitute a "minor change". One of those critical aspects is that the change does not result in "...*substantially different development*...".

This needs to be supported by a clear, unambiguous description of what constitutes "substantially different development" (the description needs to be much more determinative than the current guideline under the SPA).

(32) **Section 84(3)** states that a person (making the request for a change to an application) "*may*" give notice of the proposal and details of the change to each affected entity.

The drafting of Section 84 is otherwise silent on how an affected entity would not be notified if the person making the change chose not to give notice under section 84(3). While section 84 does not state, it would be undesirable to transfer the responsibility of notifying all *affected entities* to the *responsible entity* following their receipt of the request.

Section 84(3) should be amended to require the person making the change to give notice to *both* the responsible entity *and* all affected entities.

(33) **Section 84(4)(c)** indicates that the assessment manager and applicable referral agencies are "affected entities" for making a "minor change" to a development approval issued, or a condition imposed, by the Minister or the Planning and Environment Court. The reference to the Minister and the Planning and Environment Court should be expanded to also include the Building and Development Dispute Resolution Committee.

(34) The 15 business day response time listed in **section 84(7)** for the "affected entity" to consider a "minor change" and issue a "response notice" can be too short for some proposals (the corresponding time under the SPA is 20 business days). Given that the default position is that the "affected entity" is taken to have no objection to the change if a "response notice" is not given within that 15 business day period, a longer response time or the ability to seek an extension of the time for responding needs to be built into the provision.

Similarly, the 20 and 25 business day decision periods listed in **section 85(7)**, **(8)** and **(9)** are equally deficient and need to revert to the current timeframes set under the SPA.

(35) Council notes that these preceding paragraphs relate to the making of a "minor change" to a development approval, aided by the explanation at **section 84(2)** as to what extent an approved development may change and be considered to be a "minor change".

Section 86 covers changes to approvals that are more significant than "minor changes". Conceivably, these are changes that would result in a "substantially different development" – and fundamentally calling into question why (or how) a Council could decide to significantly change an existing approval rather than requiring the lodgement of an entirely new application for that substantially different development.

(36) Council feels that having the option of two types of changes confusing and unnecessary. The ability for a person to make a change to an approval after the appeal period should

be limited to "minor changes" where those changes have been demonstrated to not result in an approval of a substantially different development.

(37) **Section 89** (lapsing at the end of currency period) lists the default "currency periods" for the various forms of development. The default "currency period" for other work (not a material change of use or reconfiguring a lot) is listed as "*...2 years after the approval starts to have effect, if the development does not substantially start in that time*". This needs to be supported by a clear, unambiguous description of what constitutes a "*substantial start*" in development.

(38) The clarity afforded to the currency periods at **section 89** (by the removal of the 'roll-forward' provisions) is supported.

(39) **Section 89(2)** also imposes an obligation on the assessment manager to give the applicant *and* owner, (within a specified time frame of 3 to 6 months - **section 89(3)**), notice that an aspect of their development approval is due to lapse. Where such notice is not given, the development approval will not lapse until three months after such notice is given (**section 89(4)**). This obligation imposes an additional (and significant) administrative burden on Local and State Government in their respective roles as assessment managers.

Ever since the commencement of IPA, responsibility for progressing both development applications and the construction programs resulting from those approvals has logically rested with the applicant, and that is where it should remain. Taking that responsibility away from the applicant removes the incentive to act on an approval in a timely manner – and contradicts the State's intention to develop an "applicant driven" IDAS system.

Further, the repeal, savings and transitional provisions do not appear to preclude SPA (and earlier) development approvals from the application of **section 89(2)**. Therefore, it would appear that the obligation to notify an impending lapse will exist for all development approvals, even those given under earlier Acts.

(40) Council identifies that the obligations for the assessment manager to provide notice under **section 89(2)** becomes even more problematic when an applicant (as identified in that decision notice) no longer exists or cannot be located - as an approval may never lapse if the notice cannot be given to both the land owner *and* applicant.

Council steadfastly opposes the requirement for the assessment manager to giving notice of the impending lapsing of development approvals.

As an alternative – and only at the express discretion of the assessment manager – the entity (be it local government or the State (in their jurisdiction as an assessment manager)) may *choose* to offer this additional reminder service (for a fee), in the same way that it can currently offer to undertake any required public consultation under the SPA. Those local governments that do not have the technical resources (or the desire) to provide this tracking service should not be compelled to do so.

(41) The splitting of "extension applications" from "change applications" has re-introduced the confusion which existed under the initial version of IPA. Where the lapsing date for an approval is set in a condition of that approval, is an application to extend the "currency period" an "extension application", an application to change the approval, or both? This confusing situation is unnecessary and needs to be resolved.

(42) **Section 90** (extension applications) needs to be amended to impose a requirement that referral agencies having more than an advice role be consulted as part of the "extension

application" assessment process. The timelines set in **section 91** for deciding an "extension application" also need to be increased for those applications that will trigger a referral agency assessment under this proposal.

(43) **Section 91** needs to be expanded to provide an express ability for additional conditions to be imposed on the approval of an "extension application". The inclusion of additional conditions may be sought by the assessment manager, having considered "*any relevant matter*" in making their decision (**section 91(3)**).

(44) **Sections 89** (lapsing at end of currency period), **90** (extension applications) and **92** (lapsing for failing to complete) contain numerous references to "*an aspect of a particular development approval*" and "*an aspect relating to*" a particular form of development.

Those references lack clarity and should either be appropriately defined or be replaced with the expression "a self-contained component of a development approval".

(45) The specific Ministerial consultation exclusions outlined in **section 94** (limits on Ministerial powers) lack fairness. Local governments should be consulted by the Minister.

(46) The new Ministerial "step in" powers outlined in **section 110** (part of the Ministerial powers for change, extension or cancellation applications even if the application has been decided by Council) conflict with the State's ongoing program of "empowerment" of local government, noting the policy commitment of the Government that:

> *"The LNP recognises that Councils are the elected bodies closest to Queensland communities. We believe that Local Governments are best placed to provide the most practical and appropriate local solutions to local issues.*
>
> *We know that, to be most effective and truly accountable to local people, Councils need to have a high level of autonomy and authority, and responsibility to plan, solve local problems and manage the growth of local communities".*

(47) The scope of **section 111(2)(a)** needs to be expanded to also cover the cancellation of an approval under section 88. The need for a covenant triggered by a development approval falls away if the approval is cancelled.

4. Infrastructure (Chapter 4)

(48) The definition of the term "maximum adopted charge" in **section 117** does not make sense and needs to be clarified.

(49) **Section 130(6)** (representations about infrastructure charges notice) needs to be expanded to explain the effect of a local government's decision not to agree to the representations made by an infrastructure charges notice recipient during the relevant appeal period. Presumably, the appeal period stops on receipt of the representations and the balance of the appeal period starts when the recipient is given notice of the decision, but this needs to actually be stated in the provision.

(50) The current power to enter land under section 715 of the SPA needs to be reflected in the new Act.

5. Repeal, Savings and Transitional Provisions (Chapter 8)

(51) The definition of the term "corresponding provision" within **section 239** needs to be expanded to also cover the SPA provisions that are intended to be reflected in a Regulation under the new Act.

(52) **Section 255** lists the type of infrastructure charges notices issued under the SPA that will continue to be regulated under the SPA rather than being "migrated across" to the processes under the new Act.

This will result in an unnecessarily confusing situation, especially given that **section 255(2)** allows amendments to an infrastructure charges notice emanating from a "change approval" or an "extension approval" under the new Act to be made under the new Act.

(53) **Section 268** contains a list of provisions that will have a delayed commencement (to do with things like adopted infrastructure charges, levied charges for trunk infrastructure, Local Government Infrastructure Plan (LGIP) identified infrastructure and additional payment conditions).

The Act would be easier to navigate and interpret if the delayed commencement was included in the provisions themselves rather than in a transitional provision at the end of the Act. This same provision also contains references to incorrect section numbers.

6. Definitions (Schedule 2)

(54) The definition of the term "**assessing authority**" should be expanded to include the Building and Development Dispute Resolution Committee and the Planning and Environment Court.

(55) The reference in the definition of the term "**charges breakup**" to "*under this chapter*" needs to be replaced with "*under chapter 4*".

(56) The definition of the term "**deemed refusal**" contains a reference to "chapter 9, part 3". There is no such chapter in the Bill.

(57) The definition of the term "**development**" stills contains the historical reference to "plumbing or drainage work" that appeared in the initial version of IPA. "Plumbing and drainage work" is regulated by the *Plumbing and Drainage Act 2002* so it should be deleted as a form of development under the new Act.

(58) The definition of the term "**local government infrastructure plan**" needs some targeted modification. It needs to be made clear that it is the Ministerial guideline under which the LGIP is prepared that needs to be adopted by Regulation rather than the LGIP itself. The introductory statement for the required content of an LGIP also needs to be modified (for example, a document that merely identifies the PIA (sub-clause (b)(i)) can't be classed as an LGIP).

(59) The current definition for the term "**non-rural purposes**" will have no practical effect unless the terms "rural purposes" and "rural residential purposes" – which are referred to – are also defined.

(60) The definition of the term "**permitted building use**" refers to "*...the use of premises or the erection of a building or other structure that is not prohibited development under the planning scheme or a TLPI...*".

This definition should potentially be refined to simply a "permitted use" or a "permitted material change of use" as the erection of a building or other structure is "work" rather than a "use".

(61) The definition of the term "**plan of subdivision**" refers to "*a water infrastructure facility*".

However, there is no corresponding description of, or definition for, "a water infrastructure facility".

(62) Under the definition of the term "**properly made**", a submission is required to state "*...1 electronic address for service relating to the submission for all submission-makers...*". Presumably, this requirement only applies to electronic submissions and only those that are lodged on behalf of more than one person. However, that needs to be made clear in the provision.

(63) The definition of the term "**sole-occupancy unit**" refers to "*...a room or other part of the building used as a dwelling...*". The scope of what constitutes a "dwelling" in this context needs to be made clear.

(64) The definition of the term "**State infrastructure**" refers to "*...hospitals and associated institutions infrastructure...*". The scope of what constitutes "associated institutions infrastructure" in this context needs to be made clear.

(65) By definition, a public sector entity that administers a regional plan for a designated region is a "**State infrastructure provider**". A regional plan is not State infrastructure, so an entity that merely administers a regional plan should not be regarded as a "State infrastructure provider".

(66) The definition of the term "**use**" includes "*...any ancillary use of the premises...*". "Ancillary" needs to be clearly defined in its scope or it will provide for activities/uses to be carried out that are more than *incidental and necessarily associated with* (case law) that primary use.

7. General

(67) Council supports the **ability to review planning schemes** with the Minister on an ongoing basis, rather than mandating the formal review (and preparation of a replacement planning scheme every 10 years at significant cost and resource burden to local government).

(68) The draft Bill and the supporting discussion papers released by the Department, suggest that aspects of development currently defined (under the SPA) as being 'exempt' development or 'self-assessable' development as transitioning into the new **'accepted' development stream**.

While generally supportive of reducing the volume of low-risk development being submitted to local government for development approval, Council expresses concerns with the potential "**over-simplification**" of the Accepted assessment category to include the two distinct forms of development currently known as exempt and self-assessable.

(69) Under the current SPA, 'exempt development' is exempt from any assessment against the planning scheme – there are no assessment criteria (soon to be called assessment benchmarks) to be complied with. Self-assessable developments on the other hand, do require a person to undertake their own assessment of compliance against a set of prescribed development parameters/outcomes in order for that development to proceed without the need for a performance based assessment of a development application by Council.

Where the draft Bill proposes that low risk development currently known as 'exempt' and 'self-assessable' be bought together as '**accepted development**', it is not yet understood by Council how this single category of development will be used to separate what are two

very different categories of development, being:
(a) Accepted uses that did not have any assessment benchmarks (e.g., 'exempt' development under the SPA); and
(b) Accepted uses that would require a qualitative assessment against the assessment benchmarks (e.g., 'self-assessable' development under the SPA).

(70) If the Accepted assessment category were to operate along the lines of what is currently recognised as being 'exempt' development – where Accepted development did not have any assessment criteria - **local government would be likely to transition many 'self-assessable' uses towards a Standard assessment category** in order to ensure that basic assessment benchmarks (for example - gross floor area, setbacks, building heights, car parking) can be achieved.

(71) Council strongly encourages the **retention of the 'exempt' assessment category** for those aspects of development which have no requirements under the planning scheme, thereby clearly distinguishing those from the forms of development currently known to be 'self-assessable' which would fall within the new Accepted development category.

(72) A number of provisions within the draft Bill contain incorrect references to other sections and these need to be corrected in the final draft.

(73) To the extent that the draft Bill makes references to "*days*", these references should be changed to "*business days*".

8. Regulations and Guidelines

A key aspect of the planning reform agenda has been the deliberate drafting of development assessment and decision "rules" as supporting guidelines or Regulations, separate to (but called up by) the new Act.

Council acknowledges that this supporting material is still being drafted by the State, but has appreciated the opportunity to discuss and workshop the preliminary 'rules' in recent forums attended by State and Local Government representatives.

While Council looks forward to collaborating with the State further to refine the supporting material, we take this opportunity to provide the following preliminary comments for the State's consideration:

(74) Council is supportive of the State's intention to provide a greater level of responsibility for an Applicant to manage their application through the assessment process, but expresses caution with the extent of flexibility that applicants are being afforded in the streamlining of the assessment process.

(75) Council has concerns that the significantly compressed **assessment timeframes** – measured from the date that the application is accepted or deemed to be 'properly made' - will not be long enough to undertake a thorough review and assessment of complex standard (20 business days), merit and variation (30 business days) applications.

(76) The implications for an assessment manager (which may include an 'alternative' or 'chosen' assessment manager) not meeting the assessment timeframe for Standard Assessment applications is a '**deemed approval**', which is particularly concerning for complex or controversial applications.

(77) The **'floating' public notification**, as proposed, will allow an applicant to commence notification immediately after the application being accepted as being 'properly made' (or

deemed to be 'properly made'). This may give rise to circumstances where the community wish to raise concerns or discuss the proposal with the local government, prior to the local government having had the opportunity to undertake a preliminary review of the application (and ask for further information regarding the proposal).

(78) **Removal of the sequential IDAS system** to modular system will also cause confusion in the community with the prospect of applications being publically notified without the information necessary for the community to make informed comment. It also risks the proposal that the local government may ultimately assess/decide being one different to that which was earlier notified.

While the "substantially different development" test (or similar) could be applied, there may be instances where a change made by the applicant after their early notification (either as a result on an Information Response or a change made at their own volition) may – on face value – not fail the "test" of a 'substantially different development', but which may be significant enough to have caused a submission being made from a person who originally did not submit.

An example of this may be for a development where an access point to/from the fronting road may shift – and potentially not all that significantly – from a location shown on the originally notified plan, perhaps to a new location immediately opposite another person's property. In the context of the scale and nature of the particular proposal, the mere shifting of the access may not represent a significant departure from the originally notified proposal; however, represents a change significant enough to potentially have an adverse amenity impact on another (or a different) nearby person.

(79) The modular or 'floating' public notification may cause the local authority and applicant to disagree as to whether the proposal should be **re-notified** – taking time out of the compressed assessment period.

(80) Council is concerned that the applicant's ability to **'opt-out' of an Information Request** will lead to local governments being forced to either (i) heavily condition a development approval (potentially raising the question as to whether a development approval should in fact be issued if it is so reliant on matters being addressed post-decision), or (ii) refuse a development application.

Council expresses caution that the applicant's choosing to opt-out of this very necessary stage of the assessment process will lead to a greater number of proposals being decided through the Appeal process – in conflict with the State's recent reform initiatives to reduce the number of proposals being decided by the Planning and Environment Court and the Alternative Dispute Resolution (ADR) registrar.

Under the current SPA (and under the IPA process before that), applicants already have the opportunity to (i) respond to an information request in full, (ii) respond to an information request in part, or (iii) provide no response to the information request.

It is this Council's view that the applicant can already "opt-out" of supplying additional information beyond the common material submitted at lodgement, and is concerned that the removal of the opportunity for local government to ask for further information could significantly prevent the achievement of high quality development outcomes.

(81) **'Stop the clock' provisions** should also be afforded to the assessment manager, particularly if the assessment manager seeks to provide the applicant with notice (during the decision stage) that the proposal risks being refused due to insufficient or inadequate information, or non-compliance with the assessment benchmarks.

By allowing the assessment manager to 'stop the clock', applicants would be afforded the opportunity to respond to the notice without the risk of the application being determined by the assessment manager (i.e., refused) due to the compressed timeframes (particularly for Standard assessment applications which may otherwise attract 'deemed approval').

9. Timing, Resourcing and Implementation

(82) The anticipated commencement of the *Draft Planning and Development Bill 2014* in early to mid-2015 will have significant resource and financial implications on Local Government, as Councils across Queensland seek to transition from their existing systems to new/updated systems capable of supporting the new planning framework – in parallel with the ongoing SPA framework for "in flight" applications.

(83) Council requests that the State ensure that sufficient time and appropriate resources will be made available by the Government to assist Local Government prepare for and implement the new planning framework.

Council applauds the State Government on undertaking this planning reform and appreciates the opportunity to provide comment. As one of Australia's largest and fastest growing Councils, we look to continuing to work with you over the coming months as you deliver this important reform to Queensland planning system.

Yours faithfully

Cr Mick Gillam
Chairperson Planning & Development