PROPERTY COUNCIL of Australia

PROSPERITY | JOBS | STRONG COMMUNITIES

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Submission on

Planning and Development (Planning for Prosperity) Bill 2015

Planning and Development (Planning Court) Bill 2015

13 July 2015

Contents

1. Executive Summary

Thank you for the opportunity to provide feedback on the Private Member's Bills- *Planning for Development (Planning for Prosperity) Bill 2015* (Planning Bill) and *Planning for Development (Planning Court) Bill 2015* (Planning Court Bill).

As you would be aware, the Property Council has been involved in consultation on the development of the Planning Bill since 2013.

We actively participated in the workshops undertaken by the former Government, and have provided numerous submissions to inform the drafting of the legislation.

We are pleased to see bipartisan support for planning reform in Queensland, as it is only through a better planning system that we will be able to increase land supply, reduce the cost of housing and provide certainty for the community and development industry alike.

With both major political parties supporting the aim of developing Australia's best land use planning and development assessment system for Queensland there are now two planning reform processes underway, both aiming to deliver similar outcomes.

Considerable resources are required to participate in consultation sessions and to draft formal submissions, so it would be preferable for stakeholders if both planning processes converged, allowing all resources to be focused on developing a single pathway for reform in Queensland. This would also give certainty and a clear direction for reform, which would increase confidence to invest in Queensland.

Regarding the Planning Bill, the Property Council supports the work undertaken to streamline and simplify the legislation, and in doing so significantly decreasing its overall length.

The Planning Bill is an easily navigable piece of legislation, with subtle changes in language from its predecessor- the *Sustainable Planning Act 2009* (SPA)- that will facilitate cultural change, and in doing so support better development outcomes.

The reduced scope of the Planning Bill consequently means that much of the detail of Queensland's new planning system will sit in guidelines and regulations outside of the legislation.

As a result of this, it is difficult for the Property Council to provide comprehensive feedback on the expected operation of the Planning Bill without access to these extra materials.

The following feedback has been provided to assist the Infrastructure, Planning and Natural Resources Committee to understand the property industry's position on both the Planning Bill and the Planning Court Bill.

2. Summary of key recommendations

Provisions carried over from the *Sustainable Planning Act 2009* that are important to retain:

1. Ministerial power to direct local governments to comply with their obligations under the legislation.
2. Superseded planning scheme and compensation provisions for local governments.
3. SARA and the development assessment trigger reduction program.
4. Deemed approvals.
5. Ministerial call-in powers.
6. Queensland's infrastructure charging framework.
7. Discretion of the P&E Court in the awarding of costs in appeal proceedings.

Provisions removed from the *Sustainable Planning Act 2009* that should be reintroduced:

8. Legislative support for the role of regional plans in identifying regional outcomes and resolving matters of State interest.
9. Requirement for regular reviews and amendment of local government planning schemes.
10. Hardship provisions for owners adversely affected by designations.
11. Assessment manager's discretion to determine when an application is considered to be 'properly made'.

New additions to the legislation that should be retained:

12. Acknowledgement of the economic and social benefits of development through the Purpose of the Act.
13. Introduction of a focus on 'facilitation' of development- rather than the 'precautionary principle'- to promote cultural change.
14. A revised hierarchy of State planning instruments.
15. Introduction of exemption certificates.

16. Introduction of a process to change applications other than for a minor change.
17. Assessment manager's discretion to excuse noncompliance with notification requirements.
18. Simplified currency periods for development approvals.
19. Introduction of third party assessment of applications.

Other recommendations for consideration:

20. Ensure the transition to new legislation is not unnecessarily stalled through the development of common-format local government planning schemes.
21. Introduce a greater focus on community consultation in the early stages of local government plan-making, including notification of owners likely to be affected by revised natural hazard mapping.
22. Changing the categories of assessment for assessable development from 'code' and 'impact' to 'standard' and 'merit' (while acknowledging the positive impact on culture) may unnecessarily delay the local government planning scheme transition process.
23. Ensure local governments retain responsibility in subsequent stages of the application process for decisions made by third party assessment managers.
24. Ensure adequate resources are directed towards monitoring and reporting on local government implementation of the infrastructure charges framework.
25. Introduce owner's consent to be required before an application is decided, rather than at lodgement.
26. Revise transitional provisions to ensure they will facilitate a smooth transition to the new legislation.

3. Property industry's contribution to the Queensland economy

The property industry in Queensland creates the homes we live in, the offices in which we work, and the shopping centres and recreational areas where we spend our leisure time.

It has a larger footprint on the Queensland economy than any other industry[1].

3.1 Contribution to Gross State Product (GSP)

The property industry directly contributed $33.8 billion to GSP in Queensland in 2013-14, representing 11.4 per cent of total GSP.

It is estimated to have contributed a further $49.9 billion to Queensland GSP through *flow-on demand for goods and services*.

3.2 Contribution to employment

The property industry directly employed 239,772 full time equivalent (FTE) employees in Queensland in 2013-14, representing 12.1 per cent of the state's workforce.

The industry also supported some 292,684 additional FTE jobs through flow-on activity.

Approximately 27.4 per cent of wages and salaries paid to Australian workers are generated by the property industry.

3.3 Contribution to government revenues

The property sector in Queensland contributed approximately $9.9 billion in combined State Government tax revenues and local government rates, fees and charges revenue in 2013-14. This equates to 49.8 per cent of total State taxes and local government rates, fees and charges revenues in 2013-14.

[1] All the statistics in this section are sourced from AEC group, 2015

4. Preliminary

Purpose of the Act

The Property Council supports the Planning Bill's purpose as drafted, as it provides a clear overview of the legislation's intention to facilitate development and focus on the triple bottom line benefits it can bring to a community.

The *Sustainable Planning Act 2009* (SPA) focuses solely on the importance of 'ecological sustainability' in development, and fails to recognise the broader economic and community benefits that development can deliver. It also focuses on 'managing' the process and effects of development, rather than the more positive language in the Planning Bill's purpose, which aims to 'facilitate' development.

The Property Council also supports the removal of the 'precautionary principle' from the purpose of the Act. The precautionary principle assumes that all proposed development will have a negative impact on the environment, unless proven otherwise.

The removal of this principle will have a positive impact on the culture within planning and development assessment, as it will allow proposals to be considered for their benefits, rather than managed against perceived negative impacts.

5. Planning

State planning instruments

The Property Council supports the removal of State Planning Regulatory Provisions (SPRPs) from the planning framework, as this will not only simplify the hierarchy of instruments, it will also provide greater certainty to stakeholders.

As SPRPs can currently be introduced at any time and cover any region or State interest, they introduce a level of uncertainty into the planning system.

SPRPs currently sit at the top of the hierarchy of State planning instruments, meaning they must be taken into consideration in all planning and development assessment matters.

With the State Planning Policy (SPP) covering **all** matters of State interest, there is little need for the retention of SPRPs.

Those SPRPs with regionally specific outcomes, such as the South East Queensland Koala Conservation SPRP, can be transitioned into the Regulation, rather than being retained as standalone instruments.

The removal of SPRPs will also allow the SPP to rise to the top of the hierarchy of planning instruments to reinforce its importance in the planning framework.

Further emphasis does, however, need to be placed in legislation on the role of regional plans as statutory instruments that are intended to resolve State interests at a regional level, and are required to be reflected in local government planning instruments.

The definition of regional plans in Chapter 1 of the Planning Bill notes they set out 'planning and development assessment policies about matters of State interest', however there is no recognition of their role in resolving conflict.

As further noted below, there is little done to ensure local governments adequately reflect State planning instruments and policies in their local planning schemes. The time taken for regional plans to be reflected in planning schemes has caused Property Council members significant concern in the past.

Local planning instruments

The Property Council supports consistency across local government planning schemes as a way to simplify the planning system and ensure common implementation of State requirements.

In noting this, it is imperative that the development of new common scheme requirements (presumably a modified version of the Queensland Planning Provisions) does not hold up the process of transitioning to the new legislation.

Likewise, it is imperative that mandatory consistency of key components of schemes does not stifle local government innovation in developing new and better ways to implement planning processes.

As under SPA, clause 15 of the Planning Bill proposes that the Minister will be responsible for developing rules and guidelines for making and amending local planning

instruments. As part of the revised guidelines, the Property Council would like to see a greater focus on the requirements for community consultation at the early stages of the plan-making process, rather than waiting until the public consultation or development assessment notification period.

This would ensure greater community buy-in and understanding of where development is expected to occur at a time when they are best able to influence outcomes.

Similarly, the Property Council would like to see a greater emphasis placed on informing owners of potential impacts on their property rights as a result of a new or amended planning scheme e.g. potential downzoning to reflect newly obtained flood mapping.

Recent experience has shown that not enough emphasis has been placed on creating community awareness of the potential impacts of planning schemes on property rights.

The SPA includes a requirement for local governments to develop new schemes every ten years. While this requirement is never enforced, its presence serves as a reminder to local governments that there is an expectation that planning schemes need to be continually reviewed and updated.

The Property Council would like to see a timeframe for review reinstated, and suggests seven years as an appropriate time.

State powers for local planning instruments

As noted, Ministerial provisions to direct local governments to ensure they comply with their obligations under the legislation are very rarely enforced. The Property Council would like to see greater usage of the provisions currently in clause 21 of the Planning Bill to ensure that planning schemes remain relevant and accurate.

Superseded planning provisions

When the SPA was introduced, it reduced the timeframe available for people to lodge a superseded planning scheme application from two years to one year.

The superseded planning provisions are often used by proponents who are negatively impacted by a change to a planning scheme.

Chapter 2, Part 4 of the Planning Bill contains provisions about making applications under superseded planning schemes, and it is imperative that these provisions continue to provide proponents with at least 12 months to lodge a superseded planning scheme application.

Compensation

Legislative provisions relating to compensation are essential to ensure the protection of the property rights of all Queenslanders. We are pleased to see the inclusion of compensation provisions in Chapter 9, part 3 of the Planning Bill.

Section 706 of the SPA (relating to injurious affection) is well understood by all stakeholders, and provides a balance between allowing local governments to rezone land where there is a significant risk as a result of a natural hazard, and protecting the property rights of the owners of the land.

Through the retention of a similar provision, currently under clause 24 of the Planning Bill, a positive culture is facilitated whereby local governments are required to engage with land owners to determine if there is an appropriate use for the land that can be achieved through development conditions, or for example, through allowing greater density on part of the site, but no development on another part.

In situations where a land parcel is so severely impacted that there are no appropriate uses, the local government is able to downzone the land parcel while being protected under the legislation from compensation claims.

If this section of the legislation were to be removed, it would allow for the blanket rezoning of land with no right to compensation, even in areas where great development outcomes could have been achieved through the imposition of development conditions by the local government.

Its removal would in effect undermine the property rights of thousands of Queenslanders whose properties are potentially affected by natural hazards.

The Property Council therefore supports clause 24 of the Planning Bill.

Designation

The Property Council supports the proposed changes to provisions for the designation of premises for development of infrastructure, as they will assist in facilitating the delivery of private infrastructure development (Chapter 2, Part 5 of the Planning Bill).

The provisions, however, do not expressly provide for rights for an owner of an interest in designated land who is experiencing hardship as a result of a designation. Designation may have serious financial consequences for an owner, particularly where the land is security for a loan or other financial arrangement.

The Property Council would like to see an equivalent Section 222 of the SPA inserted into the Planning Bill to ensure the protection of land owners.

6. Development Assessment

Types of development and assessment

Without access to the decision rules and assessment benchmarks upon which Chapter 3 of the Planning Bill is based, it is difficult to determine how the proposed changes will operate.

It will be important for the regulation to clearly provide for which types of development are permitted by local governments to be considered as prohibited or assessable, as this will further assist in lowering levels of assessment and driving consistency across local government planning requirements.

The simplification of the categories of development to prohibited, assessable and accepted under clause 39 of the Planning Bill provides for a clearer understanding of the types of development in Queensland, than the categories currently utilised in the SPA.

The Property Council is concerned, however, that the proposed change to the categories of assessment for assessable development under clause 40 of the Planning Bill- namely standard and merit assessment- will delay local governments' transition of their planning schemes to the new legislation.

Retaining the existing terminology of 'code' and 'impact' may facilitate an easier and quicker transition process for local governments, as it will allow there to be a greater focus on the decision rules and assessment benchmarks that enable change, rather than on the names themselves.

In noting this, the Property Council considers the term 'merit' to be a more accurate and appropriate reflection of the assessment required of applications than 'impact', i.e. they are being considered on their merits, rather than the current negative connotations implied by an application being assessed to determine its impacts.

The Property Council supports the introduction of exemption certificates under clause 41 of the Planning Bill as a mechanism to allow minor or inconsequential development outcomes to be achieved without the lodgement of a development application.

It will be important that copies of exemption certificates are provided on request as part of a standard or full planning and development certificate, particularly during due diligence.

Development applications

The possibility of third party assessment provided for by clause 43 of the Planning Bill is supported by the Property Council, and builds on the current successful 'RiskSmart' process utilised by a number of local governments.

It will be important to ensure that where any assessment is undertaken by a third party, the local government remains responsible for decisions and record management, and ultimately ensures it is involved with any further stage of the process, such as appeals, extension applications, declarations etc.

Minor changes to the public notification requirements for development applications as proposed in the Planning Bill will ensure that assessment managers are provided with

the discretion to make sure developments are not unnecessarily held up by minor matters of noncompliance.

The requirements in clause 48 of the Planning Bill that any noncompliance must not have 'adversely affected the public's awareness' or 'restricted the public's opportunity to make properly made submissions', provide a safeguard for the community that their rights will not be diminished through the introduction of this provision.

This provision will ensure that there is an avenue by which assessment managers can excuse insignificant issues which have previously required applicants to undertake public notification for a second time, such as incorrect font size on notification signs.

Assessing and deciding development applications

In lodging development applications with local governments, it is important that like in the public notification stage, assessment managers have the discretion to excuse minor matters of noncompliance, such as an inconsequential error on the application form.

This allows applications to begin the assessment process and resolve minor matters in due course, rather than being unduly delayed at the application stage.

The Property Council is disappointed to note the requirement under clause 46 of the Planning Bill for owner's consent to be provided when lodging an application, rather than the previously flagged change, whereby consent would be required prior to the public notification process, or to the assessment manager making a decision on an application.

Under the previous proposal, projects being held up by negotiations with landowners could begin to be assessed by the assessment manager, with a requirement that the owner's consent is provided at a later stage in the process.

As no decision could be given without owner's consent, and as a development permit attaches to the premises and does not confer any proprietary rights, the risk of not gaining a decision would remain with the applicant.

Development assessment is a costly process, and it would be highly unlikely that an applicant would pay the fees to lodge an application for a site where they were not in negotiations to purchase the site, or expecting to gain the owner's consent in the near future.

While the role of the State Assessment and Referral Agency (SARA) is determined by the Regulation rather than the Planning Bill, the Property Council takes this opportunity to reinforce its support for the retention of SARA as the single point of assessment for development applications referred to the State Government.

This initiative has significantly reduced the time and complexity associated with State Government referrals for development applications, and we are keen to ensure it is retained in its current format.

The ongoing development assessment trigger reduction program has also seen significant benefits to all stakeholders, as it allows the Government to focus its resources on bigger, higher risk projects and provide standard requirements for those considered to be lower risk.

The retention of the deemed approval provisions in clause 61 of the Planning Bill is supported by the Property Council. While these provisions are infrequently used, they provide a mechanism to ensure statutory timeframes are met by assessment managers.

The established deemed approval process provides local governments with an opportunity to condition the application that has deemed to be approved, however they have a shortened timeframe in which to do so, otherwise standard conditions will apply.

The Property Council also supports the retention of the 'reasonable and relevant' requirements for the imposition of conditions on a development approval, under clause 62 of the Planning Bill.

Development assessment rules

As noted, without access to the development assessment rules referred to in Chapter 3, Part 5 of the Planning Bill, it is unclear how their operation will impact on the broader planning and development assessment framework.

Development approvals

The introduction of a process to change applications under clause 47 of the Planning Bill, other than for a minor change, is supported by the Property Council.

There is some concern, however, that these provisions will not operate as intended, as it is unclear when a change becomes so significant that it will require a new application, rather than a change application.

The Property Council is pleased to see the streamlining and simplification of provisions relating to currency periods for development approvals under Chapter 3, Part 6, Division 4 of the Planning Bill.

Standardisation of the currency periods and removal of the complicated roll-over provisions will provide greater clarity for both assessment managers and development proponents.

Minister's powers

The Property Council supports the retention of Ministerial call-in powers as part of the Planning Bill, under Chapter 3, Part 7.

However, in order to deliver confidence and certainty for stakeholders, these powers should only be used as a last resort to achieve a policy or planning outcome, or to resolve an impasse between stakeholders during the development assessment process.

The Property Council believes that greater oversight of local government planning schemes at the drafting stage would ensure State interests and policy priorities are adequately reflected in the scheme, and reduce the need for Ministerial intervention at later stages in the development process.

7. Infrastructure

Queensland infrastructure charges framework

The Property Council is an active participant in the stakeholder working group established by the Government to develop the new Queensland infrastructure charges framework, introduced in July 2014.

Extensive consultation was undertaken in the development of amendments to the SPA in order to facilitate the new framework, and these have now been reflected in the Planning Bill. This consultation process is continuing, with a meeting held in June to discuss the implementation of the framework.

As it has only been twelve months since the introduction of the new legislation, and many of its provisions are yet to be embedded in local government frameworks, the Property Council believes it is too soon to undertake further changes to this section of the legislation.

Instead, greater resourcing and attention should be paid to the implementation of the legislation at a local government level, to ensure its provisions are being accurately reflected, and that it is achieving its desired intention of simplifying the infrastructure charging framework.

The Property Council has recently drawn the Government's attention to a number of local government adopted infrastructure charges resolutions which do not accurately reflect legislative requirements. There is currently limited guidance material available to inform local governments, and with no requirement for public consultation or Ministerial sign off, there are limited avenues through which to enforce desirable outcomes.

However, until there has been adequate time for teething issues with the framework to be resolved, it is imperative that all stakeholders are provided with certainty that the legislative requirements relating to infrastructure charging will not change in the short term.

8. Transitional provisions

The ease with which the transitional provisions enable local governments to implement the new legislation will be central to the success of the entire planning framework, as planning schemes are the primary mechanism for the delivery of planning outcomes in Queensland.

Transitional provisions must provide local governments with simple methods by which they can convert their current SPA schemes to take advantage of the new legislation.

Several elements of the proposed transitional provisions in the Planning Bill will require further refinement.

For example clause 249 of this section requires the approval of the Minister for local governments to convert development requiring code assessment under SPA to development requiring merit assessment under the Planning Bill.

The Property Council supports the intention of this clause as it encourages local governments to lower levels of assessment, however in reality, requiring Ministerial approval is not practical and will only serve to slow down the transition process.

Clause 266 of this section relating to development control plans (DCPs) also needs further refinement.

There is a concern that the transitional provisions for DCPs continue to create uncertainty about the future of these Plans, as a result of their interaction with the planning schemes for the local government areas in which they operate. It is critical for the development of communities such as North Lakes, Kawana Waters and Springfield that the integrity of existing development control plans is preserved, to the exclusion of later local government planning schemes.

The Property Council is concerned that the provisions in their current form do not adequately protect residents and developers of important master planned communities under these plans, as they repeat the SPA position that local governments 'may' adopt or apply a DCP, seemingly leaving it open to local governments **not** to do so.

For example, the transitional provisions in SPA and now carried forward in the Planning Bill, allow local governments the discretion to adopt DCPs independently, or in addition to, their planning scheme, although not as part of it.

The ambiguity of these provisions would allow local governments the discretion to implement a different planning strategy for DCP areas, which may in effect vary its provisions such that they are incompatible with the achievement of the objectives of the DCP, such as economic development.

It would be preferable if the transitional provisions provided greater certainty for DCPs, ensuring that the State interests upon which they were originally developed are retained throughout the life of the Plan.

While local governments should retain their important role in development assessment, greater certainty regarding the retention of existing planning provisions would secure the future role of the DCPs as the development strategies for these three areas.

9. P&E Court

Planning and Development (Planning Court) Bill 2015

The Property Council supports the ability of third parties to appeal the approval of a development application where legitimate concerns relating to planning issues have been raised.

It is, however, imperative that the independence of the Court in determining the awarding of costs in these appeal proceedings is retained.

The Planning Court Bill provides that the Court may exercise its discretion when making a costs order in a P&E Court proceeding.

Examples of matters it may have regard to when exercising its discretion include the parties' commercial interests, whether a party commenced in a proceeding without reasonable prospects of success, whether the proceeding involved a matter of public interest, or whether a party has acted unreasonably.

The breadth of the Court's discretion allows it to determine the most appropriate allocation of costs on a case-by-case basis.

Removing the discretion of the Court and establishing pre-determined criteria for how costs are- or are not- to be awarded, would risk opening up the Court system to vexatious litigation where a party can bring forward an appeal with no risk of incurring costs themselves, but may be able to inflict significant time and cost delays on another party.

Retention of the Court's discretion is essential in ensuring fairness and a level playing field for those utilising the Court system.

10. Conclusion

The Property Council would like to again thank the Infrastructure, Planning and Natural Resources Committee for the opportunity to provide a submission on the *Planning and Development (Planning for Prosperity) Bill 2015* and the *Planning and Development (Planning Court) Bill 2015.*

If you have any further questions about the Property Council or the detail included in this submission, please contact Chris Mountford on 07 3225 3000, or [redacted]

Yours sincerely

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