Your REF: Ref: 11.1.6C
Our REF: SP – Submissions for State Government Bills

Submission No. 043
11.1.13

15 July 2015

Mr Jim Pearce MP
Chair Infrastructure, Planning and Natural Resource Committee
Parliament House
George Street
Brisbane Qld, 4000

RE: Submission to the Planning and Development (Planning for Prosperity) Bill 2015

Dear Sir

Thank you for your invitation to make a submission to the Infrastructure, Planning and Natural Resources Committee regarding the above proposed legislation. Council welcomes the opportunity to comment and matters of concern are raised in the attached submission.

I trust this submission contribution is helpful. Please contact Jaco Ackerman, Manager Strategic Planning [redacted] in relation to the submission. Council looks forward to further consultation with the legislative committee.

Yours faithfully,

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Acting Chief Executive Officer

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Mackay REGIONAL COUNCIL

Submission to the Legislative Committee

Planning and Development Bill (Planning for Prosperity) 2015

14 July 2015

1. Executive Summary

Mackay Regional Council extends congratulations to government for the open consultation, availability of senior staff and general readiness to receive feedback during the planning reform process to date. The level of participation has been unprecedented and will serve as a benchmark for future changes in State legislative frameworks.

Change in Queensland's planning system in recent times has been significant. The reshaping of the planning and development framework through the release of the Single State Planning Policy and the single referral process now through the State Assessment and Referral Agency is welcomed. The focus on pre-lodgement with open discussion and collaboration throughout the planning and development framework will hopefully bring about fundamental change in how practitioners communicate. These initiatives may prove a greater boost to the industry than any new legislation.

Generally, the industry suffers from reform fatigue through IPA, Infrastructure charging policy, SPA, SPA amendments Acts, amalgamations, Smart eDA, SARA, SPP changes, the Planning and Development Bill 2014, the May 2015 Better Planning for Queensland discussion paper and now this Bill. Thus, it is very important that change has tangible benefits for planning and development.

The aim of reducing complexity and streamlining assessment is welcomed and valid. However, Council questions the necessity for some of the reforms to require a new Act. Do the benefits of the Bill outweigh the cost in time and funds to local government and practitioners to amend all the associated systems which underpin the Queensland planning system? Does the terminology for each aspect of development really need to be renamed? There is a considerable amount of reform that can proceed without enactment of new legislation.

More importantly, there is a fundamental concern surrounding the philosophical direction that this streamlining will take development assessment over time, through the proposed new levels of assessment. The reliance upon benchmarks and the funnelling of all assessment into a perceived simplified assessment stream of 'standard' may have the opposite effect where schemes do not contain sufficient rigour to withstand benchmark assessments. The Bill proposes to remove two of the lowest risk formats of development assessment based on an assumption that self assessment and compliance assessment will generally revert to exempt development. In our view, much development that requires simple low risk assessment in the self- and compliance assessment categories does not fit the exempt development assessment category. In reality, the reduced assessment stream options may push development previously subject to self or compliance assessment into higher assessment streams. This initiative may not achieve the expected outcome of a more certain and risk tolerant system.

2. Submission Matters

The following section outlines matters Council wishes to raise in relation to the Bill.

2.1. Matters of Improvement

The following matters are considered to have already, or will in the future vastly improve the planning system:

- the renewed focus on pre-lodgement and open discussion and communication between stakeholders
- transfer of regional planning matters from multiple policies in code format to robust single policy with extensive guideline material
- introduction of the single point of contact and SARA for state matters
- clarity on what is regulated (must) and what is guidance (may) especially with regard to State Planning Policy
- amendments to the Queensland Planning Provisions (QPP) and compulsory parts
- renewed focus on strategic intent for regions; and
- proposed significant reduction in IDAS forms

The above matters have been achieved without amendments to planning legislation. Council strongly believes that much of the desired reform agenda can be achieved through continued consultation and collaboration building strong relationships and capacity in the industry, enhanced training between levels of government and industry, cultural change and not necessarily a change to the name of the legislation. Changes which have positive impacts and do not necessitate a new Act include:

- removing details from the act framework into the regulations
- extended and simplified currency periods
- removal of roll overs
- decoupling of public notification from impact assessment
- minor amendments to IDAS timeframes

Whether the introduction of a completely new act is necessary given the magnitude of change that has already and can continue within the current framework, especially in considering the cost of change, is questioned. Is it necessary to change all terminology and the name of every step of the process? Will the changes add real benefit to the planning system?

Recommendation:

1) *That government consider the range of reforms that can be achieved without a new Act and examine whether each proposed amendment area is actually achieving substantial change for planning.*
2) *That government retain the nomenclature of the SPA to provide some continuity and lessen the transformation burden.*

2.2. Proposed Regulations

Previous consultation undertaken has espoused how the new legislation will change the development system in Queensland to be a completely different, efficient and streamlined system. However the true magnitude of change to current assessment rules, processes and costs remain unclear as the accompanying regulations or any statutory guidelines were not tabled with the Bill.

The circumstances of how levels of assessment may be changed, how and when planning schemes must be amended, transitional arrangements, the proposed changes to workflows and referrals and decision making timeframes are matters integral to daily operations of all stakeholders: state officers, assessment managers, consultants and developers.

A significant amount of the development assessment process is proposed to be contained within the regulations. The principle of streamlining the Act and bolstering of the regulations to provide flexibility in change for the future is supported. Although an early release of draft regulations is acknowledged, Council remains unable to make a knowledgeable submission on the effects of the Bill without the full suite of documents.

Recommendation:

That the full suite of supporting statutory and non-statutory documents is released in their complete status and consultation from industry and professionals occur prior to enactment of new planning legislation.

2.3. Changed Levels of Assessment will remove flexibility

The reform agenda espouses "*a streamlined development assessment system by simplifying the categories of development and decision rules"* (Explanatory Notes, 2015, p.1). The Bill proposes three levels of assessment and within those levels of assessment further sub-categories apply, such as merit that can be either merit notifiable or merit non-notifiable. It appears that self assessment and compliance assessment categories are to be eliminated, based on the philosophy that fewer levels of assessment will be lower risk and that development will proceed through the 'benchmark' test. It is assumed by the explanatory notes that much of the development assessment in this category will be shifted to exempt development and thus be simpler.

S39 of the Bill states:

> (2) ***Prohibited development*** is development for which a development application may not be made.
> (3) ***Assessable development*** is development for which a development approval is required.
> (4) ***Accepted development*** is development for which a development approval is not required.

The *Sustainable Planning Act (Qld) 2009* states (emphasis added):

231 Categories of development under Act
(1) The categories of development under this Act are as follows—
(a) exempt development;
(b) self-assessable development;
(c) development requiring compliance assessment;
(d) assessable development;
(e) prohibited development.

Multiple assessment levels means local government has flexibility in deciding the risk exposure. Jumping from Exempt to Standard assessment means two levels of assessment aimed at low risk assessments, have been eliminated. This seems to be contrary to the desire to enhance low-risk assessment.

Example One: Opening a bar or food and drink outlet in a residential area in an existing corner store building is not exempt development; however a local government may deem it to be acceptable and desirable, provided some basic rules are followed such as limiting opening hours. Therefore, based on this risk, a bar in a residential zone in an existing shop building is currently self-assessable. If that level of assessment is removed, it will become standard assessment as it cannot be exempt development as a bar is not acceptable in a residential zone under all circumstances. The proposed legislation Level of Assessment (LOA) system would require an application purely so a standard opening-hours condition can be applied.

Example Two: Dwelling houses are self-assessable in the rural zone (not exempt) because the Queensland Development Code (QDC) does not regulate front setbacks in accordance with road hierarchies. The QDC provides a blanket setback of 6m even if the dwelling is proposed to be on the Bruce Highway. The planning scheme requires self-assessment only in the rural zone because a 10m setback is required from arterial roads and a 20m setback from the State controlled network. These provisions are simple and protect amenity, safety and future road needs.

Example Three: A developer obtains a permit for a reconfiguration and has ideas about alternative housing product on an array of the lots. Council is agreeable to alternative set-backs, coverage, orientation, open space or whatever the case may be based on concept information provided at the RoL and MCU stage. The developer is unsure of saleability and has not completed detailed dwelling design. The permit is issued subject to compliance assessment within the agreed parameters for the dwellings. The developer does not need to spend money on details up front and can lodge multiple designs under one compliance permit at a later date without full re-assessment. This is a simple way to provide flexibility for the developer, certainty the project can proceed with only minimal further approvals. If compliance assessment is removed, the future dwellings would be standard assessment.

Example Four: In line with the applicant driven process and desire to transfer risk to the applicant, all survey plan endorsements are processed as compliance assessment. Council provides significant assistance and guidance on-line, but the onus is on the applicant to provide complete information to allow survey plan endorsement to proceed in five business days. How are survey plan endorsements to occur without this application stream?

The reform agenda has consistently provided the following rationale:

*"The intent in changing the LOA is to simplify the system to remove **low risk** development from requiring an approval and to more effectively and quickly process development applications that are in the system". (DSDIP Proposed DAQ, 24 November 2014 s1.1)*

However, Council is concerned that it will have the opposite effect: matters which are currently self and compliance assessable **(i.e. low risk)** will be bumped up to standard assessment, adding cost to development in fees and time, unwanted applications to the assessment managers and a rigid three tiered LOA system. Effectively the transition removes two **low-risk** levels of assessments but adds a higher level assessment category of merits non-notifiable. It is anticipated that the proposed levels of assessment will push current **low-risk** assessments into higher standard assessment categories.

If the intent is to provide a deviation from standard assessment to cater for the above examples, then the existing framework should remain. The only other change is decoupling notification, which can still occur.

Recommendation:

That the five opportunities for assessment levels remain unchanged, particularly those which offer the low-risk assessment opportunities.

2.4. Workability of Merit and Standard Assessment

Detail on how purported benefits of the changes to the levels of assessment outweigh the costs to local governments (and industry) to change established business systems and processes has not been demonstrated. Council maintains that the levels of assessment are not fundamentally broken and that changing names and decision making rules are unlikely to provide tangible outcomes.

There are fundamental concerns surrounding the long-term consequences of the merit and standard assessment philosophy. The intent is understood that transitioning schemes could be converted automatically to the new LOA on day one, with all code applications becoming standard assessment. Standard assessment provides a relatively certain path to approval. To date, the reform has centred around the standard assessment being set by "benchmarks" which is intended as the acceptable solutions of a code, and for transitioning schemes this will be almost certainly the case. The 2014 regulations state:

18 Standard assessment for all development applications—Act, s 40(3)
(1) This section applies to a development application for assessable development requiring standard assessment.
(2) For section 40(3) of the Act, the assessment manager must assess the development application—

(a) against the assessment benchmarks set out in schedule 10A [Standard assessment for all development applications], part 1; and

(b) having regard to the matters set out in schedule 10A, part 2.

(Note Sections 10A and 10B are not included in the draft regulations).

The regulations prescribe that assessment managers cannot have regard to any other matter for assessment other than s18 of the regulations (above). This is in contrast to the equivalent s313 of the SPA:

313 Code assessment—generally

(1) This section applies to any part of the application requiring code assessment.
(2) The assessment manager must assess the part of the application against each of the following matters or things to the extent the matter or thing is relevant to the development—

(a) the State planning regulatory provisions;
(b) the regional plan for a designated region, to the extent it is not identified in the planning scheme as being appropriately reflected in the planning scheme;
(c) any applicable codes, other than concurrence agency codes the assessment manager does not apply, that are identified as a code for IDAS under this or another Act;
(d) State planning policies, to the extent the policies are not identified in—
(i) any relevant regional plan as being appropriately reflected in the regional plan; or
(ii) the planning scheme as being appropriately reflected in the planning scheme;
(e) any applicable codes in the following instruments—
(i) a temporary local planning instrument;
(ii) a preliminary approval to which section 242 applies;
(iii) a planning scheme;
(f) if the assessment manager is an infrastructure provider—the provider's LGIP, if any.
(3) In addition to the matters or things against which the assessment manager must assess the application under subsection (2), the assessment manager must assess the part of the application having regard to the following—
(a) the common material;
(b) any development approval for, and any lawful use of, premises the subject of the application or adjacent premises;
(c) any referral agency's response for the application;
(d) the purposes of any instrument containing an applicable code.

This reliance upon benchmarks infers that the benchmarks are:

- comprehensive , covering all potential scenarios a planner may expect from a particular defined use in that zone
- measureable, accompanied by statistical benchmarks for compliance such as heights, distances, density, site cover, car parking numbers, etc; and
- certain, that there are no other options, solutions, innovations, methodologies that this land use could employ in that zone to allow approval.

Proposals would generally be approved and any solution other than the acceptable outcome could still be allowed if it could be conditioned to comply. However some planning schemes are simply not robust enough and lack sufficient "benchmarks" in their codes. SPA schemes have converted from constrained IPA codification to a more strategic outlook and performance based philosophy. Where existing schemes simply do not have sufficient rigour and automatic transitioning is required as described above, Councils may decide to adopt a more cautious approach in making development merit assessment rather than risk standard assessment with an older scheme.

Alternatively, emphasis on performance outcomes and intent may diminish over time, with a change in focus entirely upon the acceptable solutions.

A corollary of standard assessment over time may be that non-compliance with an acceptable solution is seen as non-compliance with a code and the focus reverts to "benchmarks" rather than outcomes. The practice potentially reinforces the unwanted view that development must comply with Acceptable Outcomes in order for it to be consistent.

Over time, schemes may move towards overt codification and loose flexibility for technical assessment, which the SPA has encouraged. Alternatively, Councils who steer towards merit assessment for the majority of assessment will undo the reform intent.

Recommendation:

1) *That the long term effects of creating a philosophy of 'benchmarks', reducing emphasis on performance outcomes and reducing simple assessment streams is considered with regards to the impacts on the culture of assessment and planning in Queensland which has slowly been transitioning from the IPA codification to SPA performance based planning in recent years.*

2) *That the five opportunities for assessment levels remain unchanged, particularly those which offer the low-risk opportunities. That the assessment names remain consistent and that government proceed in providing additional flexibility through decoupling of public notification.*

2.5. Cost to Local Government

From an administrative point of view, our existing systems could simply be adjusted to take into account new time frames as well as changed processes, if the reforms were contained within the SPA rather than a whole new Act. Administrative change for a new Act is significant and across numerous programs involving everything from public guidelines and risk smart material to fees and charges, software systems, scheme amendments and internal and external documentation. This means that the time frame for implementation once any bill is endorsed by parliament must be long enough to allow local government to create and test a new system.

Adaptation is likely to be ongoing as schemes settle into the new structure and decisions are made on scheme workability in the new legislative framework. As noted earlier there are significant costs to transition to a new Act, terms, templates,

IT systems and assessment levels etc. with increased resources required while maintaining separate systems concurrently while old approvals remain alive. The change through IPA / SPA / SARA / SPP among others results in a significant financial and administrative cost.

Recommendation:

1) *That the wholesale change of terminology throughout the reform be reconsidered.*
2) *That financial support be provided to local government especially for additional technical staff and software upgrades.*
3) *That additional support be provided to local government though the allocation of sufficient time to implement change; and*
4) *That support be provided to local government through investigating ways of simplifying change across the state such as*
    a. *preliminary state wide discussion with software providers or technical staff so that each council does not have to separately provide a scope and brief*
    b. *local 'buddy' or systems support officer who can provide hand's on assistance and point of contact through the transition phase*
    c. *state-wide training which covers the minute details and not just broad policy change*
    d. *issue of all draft correspondence formats, forms and templates in ample time for training and practice runs.*
5) *That a streamlined system be developed to approve planning scheme amendments which are being amended for the purposes of a new Act – especially if involving levels of assessment – for example a single state check and guaranteed 20bd turn around.*

2.6. System simplification

The core improvement target for reform is to simplify the system. Currently the core planning legislation is contained in two documents. Proposed changes will result in multiple reference points, but a similar number of pages. A comparison of the current to proposed document structure is below:

Current	SPA	723
	+ SPA Regs	257
		980 pages
Proposed	Pfor P bill	260
	+ P&E Court Bill	44
	+ PanDA Regs	237 (in draft with many sections missing)
	+ Unfinished Regs	100 (conservative estimate)
	+ DAQ	135
	+ MALPI	76
		843 pages

In addition, information on ports is removed and included in another Bill. In essence the number of pages relating to development has not meaningfully changed and the number of documents from which information must be sourced has increased.

Council supports the diminished nature of the Act and the detail being transferred to the regulations to enable more flexibility for change in the future.

Recommendation:

That the suite of statutory documents is collated into the regulatory framework to avoid multiple documents, conflicts between them and uncertainty about the origins of particular provisions.

3. Summary

Council supports the planning reform in Queensland, but is cognisant of the changes implemented to date and the cost in time and resources of ongoing change. Change must be of real and long term benefit. Council requests that the range of reforms that can be achieved without a new Act be considered and that the cost benefit of each proposed amendment area be examined.

Council further suggests that the full suite of supporting statutory and non-statutory documents be released in their complete status to allow commentary from industry and professionals, prior to any enactment of new planning legislation.

Concerns exist around the long term effects of creating a philosophy of 'benchmarks', reducing emphasis on performance outcomes and reducing simple assessment streams. This should be carefully considered with regards to the impacts on the culture of assessment and planning in Queensland. Reduced flexibility may be the result if the five opportunities for assessment levels are changed, particularly those which offer the low-risk opportunities.

The retention of the nomenclature of the SPA would provide significantly less disruption and lessen the transformation burden. Additional steps that can be taken to reduce the burden on local government include:

- providing financial support especially for additional technical staff and software upgrades
- providing sufficient time to implement change
- investigating ways of simplifying change across the state including common software matters, state-wide training and personal support; and
- developing a streamlined system to approve planning scheme amendments involving levels of assessment

The legislation is complex but it is not simplified through separation into multiple documents. Consolidation into a single regulation may be more efficient.