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State Development, Infrastructure and Industry Committee
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Dear Committee,

Sustainable Planning and Other Legislation Amendment Bill 2012 (SPOLAB)

The Queensland Division of the Planning Institute of Australia (PIA) would like to thank you for this opportunity to provide a submission to the Queensland Government on the *Sustainable Planning and Other Legislation Amendment Bill 2012* (SPOLAB). As the peak body representing the town planning profession, PIA supports legislative and administrative reform that assists planners, governments, the development industry, and local communities in creating liveable spaces and places.

PIA commends and supports the quick action of the Queensland Government in proposing changes to the *Sustainable Planning Act 2009* (SPA) through the SPOLAB. PIA acknowledges the SPOLAB is a key initial step in advancing the important task of planning reform in Queensland. The attached discussion paper was presented to the Department of State Development, Infrastructure and Planning in June. This paper outlines PIA's position on a range of short term, medium term, and long term actions to improve the Queensland planning system. PIA recognises that a range of recommended actions in this discussion paper are progressed in the SPOLAB.

PIA looks forward to continuing to work with the Government in progressing the remaining short term and longer term actions through the SPOLAB and further legislative and non-legislative reform. Further, once the SPOLAB becomes law, all parties involved in the development industry need to continue the process of statutory and non-statutory planning reform. Continued commitment to reform by government, industry and peak industry groups is required in both the short and long term to ensure the overall objectives of planning reform are met.

If you would like any further information or wish to discuss any part of this submission in more detail, please don't hesitate to contact me.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Kate Isles', is written over a blue horizontal line.

Kate Isles MPIA
President – Queensland Division
Planning Institute of Australia

SUBMISSION - SUSTAINABLE PLANNING AND OTHER LEGISLATION AMENDMENT BILL 2012

1.0 Introduction

PIA has been actively involved in working with the Queensland Government on its planning reform agenda. In June 2012 the PIA presented the Department of State Development, Infrastructure and Planning (DSDIP) with the attached Discussion Paper (the PIA Discussion Paper) to assist the Government in identifying key issues with the existing planning system, drawn from the practical experience of PIA's membership. The PIA Discussion Paper proposed a number of short term, medium term, and long term actions to reform the Queensland planning system.

This submission provides:

1. Commentary on the proposed changes to SPA provided for in SPOLAB;
2. Support for other short-term actions for consideration in SPOLAB that can enhance and support the proposed set of changes; and
3. Advice on longer-term changes to SPA required to bring about further reform.

2.0 Proposed Changes to SPA through SPOLAB

PIA recognises that a number of changes proposed through SPOLAB are consistent with proposed actions identified in the PIA Discussion Paper including:

1. central coordination of State interests;
2. review of the structure planning/master planning provisions of SPA;
3. review of the need for State resource entitlements;
4. amendments to the mandatory supporting information provisions of IDAS;
5. setting maximum levels of assessment for low risk operational works;
6. review of the Planning and Environment Court rules pertaining to costs and
7. empowerment of the Alternate Dispute Resolution (ADR) Registrar.

These matters are discussed in detail below. In addition, it is recognised that a number of other actions advocated by the PIA Discussion Paper stand outside the legislative controls of the *Sustainable Planning Act 2009* (SPA) and have not been revisited in this submission, however they still remain valid for consideration and advancement by the Queensland Government.

1. Central coordination of State interests

The approach to consolidating the existing approach of multiple concurrence/assessment jurisdictions into a single State concurrence agency, and to provide a single assessment manager where a Council is not the assessment manager is strongly supported by PIA.

However, as noted in the SPOLAB explanatory notes, the development of workable, effective and efficient administrative and operational arrangements to underpin this approach is critical. It will be important to specify that the function of the Department of State Development, Infrastructure and Planning (DSDIP) is to take advice from those supporting State agencies who are technically best placed to advise on the application, and resolve any competing interests so that development applicants are provided with clear, direct and unambiguous concurrence responses. Without this clearly defined function and mandate, the proposed approach may risk operating like the previous 'post-box style' referral coordination process as implemented under the *Integrated Planning Act 1997*.

PIA offers its support to the Queensland Government in advancing the review of administrative and operational matters required to implement this proposed change.

2. Structure Planning/Master Planning

The State's approach to remove the relevant chapter from SPA has dealt summarily with the over-regulation and confusion associated with the development of major growth areas. This approach is supported by PIA. Without questioning the value of structure and master planning, the need for separate planning provisions to establish a framework to manage development in growth areas is an unnecessary duplication of legislation as the process is capable of being accommodated through other SPA channels.

3. State Resource Entitlements

PIA supports the proposed change to the regulatory processes for state resource entitlements. State resource entitlements for development applications have long been an inhibition to timely lodgement of applications. The uncertainty surrounding the circumstances in which resource entitlements are required has fuelled substantial commentary from within the planning industry. The proposed change does not absolve the applicant from obtaining or holding the resource entitlement, but removing the requirement to provide it as part of the application allows the commencement of the assessment of the application while the resource entitlement is obtained. This assists in streamlining the application process and reduces the frustration associated with dealing with State agencies.

4. Mandatory supporting information for applications

The requirement for applications to provide all the mandatory supporting information included on the various IDAS forms has resulted in unnecessary delays to applications where the mandatory information adds little of relevance or substance to an application, i.e. four elevations of a circular structure, the location of refuse storage for single houses. The current provisions have provided no scope for assessment managers to exercise discretion in accepting applications as properly made where not containing all the mandatory information. While the proposed amendment does not remove the mandatory requirements in favour of recommended requirements as proposed in the PIA Discussion Paper, the amendment provides scope for the circumstances of the application to be considered in determining what information is necessary for the assessment of the application.

5. Maximum levels of assessment for operational works

PIA supports the setting of maximum levels of assessment for certain operational works. The regulatory processes for operational works have been under review for some time, noting the work of the SEQ Council of Mayors in the 'Target 5 Days' and 'Development Assessment Process Reform – Operational Works and Large Subdivisions' (DAPR-OWLS) projects.

PIA has provided previous submissions to the Queensland Government on the importance of these planning process initiatives, and this support is reiterated in relation to the implementation of the proposed changes to SPOLAB regarding operational works. PIA believes further commitment to the implementation of these initiatives is required to building on the legislative improvements proposed through SPOLAB, and can provide further assistance to the Queensland Government in relation to advancing these important initiatives.

6. Review of P&E Court rules pertaining to costs

The general intention to reform the Planning and Environment Court cost rules is supported by PIA, as this was a key area of reform identified by the PIA Discussion Paper. However, the practical implications of the proposed changes to section 457 in particular warrant further analysis prior to adoption.

Section 457(1) of SPA currently requires that *each party to a proceeding in the court must bear the party's own costs for the proceeding*, subject to the alternative circumstances in s457(2) where the court in the exercise of its judicial discretion (instructions to be exercised fairly) may require a party to pay another party's costs.

The SPOLAB explanatory notes state *...the Bill introduces the concept that costs are to follow the event but always subject to the discretion of the Planning and Environment Court. This is in line with the rules under the Uniform Civil Procedure Rules which apply in the Supreme and District courts.*

The Bill omits the current cost provisions in section 457(1) and inserts new provisions which provide that whilst the Court has a discretion to award costs, as a general rule costs are to follow the event such that the unsuccessful party in a proceeding will be required by the Court to pay the successful party's costs.

The drafting of section 457(1) is in very similar terms to the Uniform Civil Procedure Rules which applies in the Supreme and District Courts. The effect of the UCPR provisions is that whilst the Court has a discretion to depart from the general rule where it would be unfair for costs to follow the event, the Courts have recognised that these circumstances are very few.

The Bills costs provisions will therefore generally result in the unsuccessful party to a proceeding being required by the Court to compensate a successful party for its costs.

PIA members have raised concerns that the Bill's cost provisions will therefore have adverse financial implications for local governments which are respondents to all appeals and will adversely affect access to justice for persons of limited financial means such as community groups or indeed applicants/ developers whose financial position may be limited in the current economic environment.

While the approach of the Court requiring a party to pay another party's costs is supported in specific instances such as where there is a clearly vexatious or obstructionist attempt to use the Court to delay or defeat a development, the nature of development and environment cases brought before the Court often relate to examining specific project elements or approval conditions of a development rather than always clearly identifying a winning or losing party, such as an applicant appeal against conditions that are reduced or changed but not removed. In such circumstances it would not be appropriate for costs to follow the event. However, PIA members have noted that the proposed cost provisions as currently drafted would require costs to follow the event.

For context, the PIA Discussion Paper put specific emphasis on investigating three specific instances where costs could be awarded against a party to a proceeding:

- in an proceeding against a party if their behaviour is unreasonable;
- in an enforcement proceeding; and
- in an appeal proceeding relating to a retrospective development application for a development offence.

It is noted that whilst the proposed change would address the first point, the proposed change involves implications that go well beyond the limited scope of awarding costs against a party where their behaviour is unreasonable. Further analysis of the unintended consequences of the proposed change prior to its adoption is therefore warranted.

In addition, any such proposed amendment to the circumstances of awarding costs should provide clear guidance in the legislation as to when and how the court should exercise the discretion to award costs against a party given the significant financial and access to justice issues.

Further, it is also noted that the proposed change does not address the second and third points raised by the PIA Discussion Paper. PIA offers further assistance to the Queensland Government in defining the objectives and purpose of this proposed change.

7. ADR Registrar

The proposed expansion of the Alternative Dispute Resolution (ADR) processes as they relate to planning and environment matters is supported by PIA.

It would appear that the proposed provision that each party bears their own costs in a matter brought before the ADR Registrar (proposed section 491B[3]) would provide certainty of cost apportionment for those matters heard by the Registrar that do not involve a clear winning or losing party, such as in the negotiation of conditions, matters of legal process or specific project elements. This approach is also supported by PIA.

The key to the successful operation of the expansion of the ADR processes as they relate to planning and environment matters will be how the Court instructs the ADR Registrar in examining those matters to be heard and resolved. Further clarity on the matters to be heard by the ADR Registrar and its decision making scope would be appropriate.

3.0 Other Key Short-term Actions

A number of other short term actions were identified in the PIA Discussion Paper, which have not been addressed by the SPOLAB. There is a unique opportunity to address many, if not all 'short term' issues detailed in the PIA Discussion Paper through SPOLAB, given the possibility of a long lead time prior to the next set of amendments to SPA that will be required to continue to reform planning in Queensland. A number of these short term actions could be added to the SPOLAB with minimal concern or risk to the planning system.

These short term actions are:

1. Revision of Section 706 Compensation Provisions

The ability for local governments to make confident and clear planning policy is paramount to an effective planning system, and clear compensation provisions that articulate how and when such compensation is payable are critical. For example, the recent natural disasters in Queensland have proven instructive on the role of, and importantly, limitations on how planning practice can adequately address natural hazard risk to existing settlements. The current section 706 of SPA that addresses the extent to which compensation is payable following a planning decision by a local government in response to natural hazard notes (in part) *compensation is not payable if the change affects development that, had it happened under the superseded planning scheme, would have led to significant risk to persons or property from natural processes (including flooding, land slippage or erosion) and the risk could not have been significantly reduced by conditions attached to a development approval.*

PIA understands the current wording of section 706 of SPA is a significant impediment to a local government's ability to 'back-zone' existing urban land that is at intolerable risk of natural hazard, given the wide scope for interpretation afforded by the role of development conditions in potentially mitigating risk. For example, this impediment could be avoided by removing the phrase *and the risk could not have been significantly reduced by conditions attached to a development approval* from the above part of section 706.

There is a unique opportunity to advance the Queensland Floods Commission of Inquiry recommendations in a timely manner by addressing this key planning issue through SPOLAB. Principally, recommendation 4.1 notes (in part) *the Queensland Government should investigate whether the compensation provisions of the Sustainable Planning Act 2009 act as a deterrent to the inclusion of flood controls in a planning scheme and consider whether they ought be amended.*

Further analysis of this matter is suggested to arrive at a solution appropriate for the intended circumstances. PIA offers further assistance to the Queensland Government in advancing this important matter.

2. Remove need for Newspaper Notice and Letter of Commencement

PIA considers the requirement for a newspaper notice advising the community of an impact assessable development application, and letter of commencement to Council as examples of inefficient process and unnecessary expense. While there is no doubt that informing the community of such development is necessary, the manner in which it is done, and the requirement for this to be detailed in law requires further consideration. Given recent advances in communications and technology, Councils could then be free to consider more effective solutions such as an ePlanning approach (e.g. via a dedicated Council website page,

or via PD online), social media, and the like. With this approach the need for a letter of commencement from the applicant to Council would become redundant.

3. Streamline currency periods

Given the proposed introduction of the single State concurrence agency approach to referrals, the opportunity also exists to address through SPOLAB the current inconsistency in concurrence agency currency periods and development permit currency periods. As noted in the PIA Discussion Paper, at present concurrence agency currency periods are only 2 years from the date of approval, while the development permit itself has a currency period of 4 years. Given the introduction of the single State concurrence agency approach, the complexity of this situation will reduce significantly, however without a complementary change to the concurrence agency periods in SPA, the inconsistency in approval validity will remain.

4. Consistent 20-business day notification period for impact assessable applications

PIA also considers that the proposed introduction of the single State concurrence agency approach to referrals will negate the need for differential public notification periods that are based (rather arbitrarily) on the involvement of three or more concurrence agencies in the assessment of the application. Given SPOLAB will eliminate these multiple concurrence agencies, there is clear benefit in adopting a consistent notification period for all impact assessable applications at the same time, or at least at the time the proposed provisions are operationalised. PIA considers a uniform period such as 20 business days provides sufficient time for public notification.

4.0 *Key Longer-term Actions*

The PIA Discussion Paper sets out a range of medium-term and long-term changes relevant to the advancement of planning reform in Queensland. While not strictly related to SPOLAB and its proposed changes to the planning system, it is important to maintain a focus on the 'long term view' to ensure that reform actions are advanced into the future, and do not stop at SPOLAB. Some of these key actions include:

- Broader review of the Planning and Environment Court rules – while identified as a short-term action in the PIA Discussion Paper, there are additional key actions related to the operation of the Court that would benefit from review;
- Amendment of local planning instruments (e.g. planning schemes) by Council resolution for key planning issues that may change as more detailed information becomes available (such as improvements to natural hazard information), or as the characteristics of the matter change over time in response to development changes (such as vegetation triggers);
- Advancement of ePlanning technologies needed to enhance process efficiency and strategic planning; and
- Establishment of training programs in partnership with the State, LGAQ and other industry bodies.