



Sustainable Planning and Other Legislation Amendment Bill 2012

Submission

**Local Government Association of Queensland Ltd
Council of Mayors (SEQ)
12 October 2012**

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association setup solely to serve councils and their individuals' needs. The LGAQ has been advising, supporting and representing local councils since 1896, allowing them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places that count; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and delivering them the means to achieve community, professional and political excellence.

The Council of Mayors (SEQ) is Australia's largest regional Local Government advocacy organisation that represents a region which is home to one in seven Australians, generates one fifth of the Nation's economic growth and remains a powerhouse of Australia's future. The Council of Mayors (SEQ) aims to:

- Advocate for a better planned and resourced region.
- Influence other levels of government to support a growing and sustainable region.
- Collaborate for leading practice in service delivery for the region.

Introduction

1. On 13 September 2012, the Hon. Jeff Seeney MP, Deputy Premier, Minister for State Development, Infrastructure and Planning, introduced the Sustainable Planning and Other Legislation Amendment (SPOLA) Bill 2012 into the Queensland Parliament.
2. The LGAQ and Council of Mayors (SEQ) welcome the opportunity to provide feedback to the State Development, Infrastructure and Industry Committee in response to the SPOLA Bill 2012.
3. The LGAQ and Council of Mayors (SEQ) congratulate the State Government and the Assistant Minister for Planning Reform, Mr Ian Walker MP, for the early and collaborative engagement with local government to identify ways to improve the Queensland planning and development system. It is recognised that the SPOLA Bill 2012 represents the short term initiatives of a longer term planning reform agenda in Queensland.
4. The LGAQ and Council of Mayors (SEQ) have worked closely in representing the collective views of local government in the development of the planning reform agenda. On this basis, it is considered appropriate to provide a joint submission on the SPOLA Bill 2012.
5. The SPOLA Bill 2012 seeks to address some of the perceived issues within Queensland's planning and development system by amending the *Sustainable Planning Act 2009* (SPA). The principal changes include:
 - a) new cost provisions which, if passed, will give the Planning and Environment Court a greater power to make cost orders against parties to a proceeding in the court, with a presumption that the losing party will ordinarily bear the costs of the proceeding unless the Court orders otherwise
 - b) increased powers for the ADR registrar to hear and decide simple matters which, under the current provisions, would be heard by the Court
 - c) removal of the master planning provisions, hence requiring local governments to amend or make new planning schemes which directly incorporate structure plans for declared master planned areas
 - d) the Department of State Development, Infrastructure and Planning becoming the single State referral agency for all matters, replacing the need for applicants to separately refer an application to multiple State agencies
 - e) removal of the requirement for applicants to provide evidence of allocation of, or an entitlement to, a State resource when making an application for a development approval
 - f) providing assessment managers with a discretion to accept development applications as being properly made in particular circumstances provisions
 - g) to enable the Queensland Planning Provisions to apply to override IPA planning schemes.
6. The LGAQ and Council of Mayors (SEQ) support, in principle, the majority of amendments included in the SPOLA Bill 2012. There is strong support for the intent to establish a single State Government Referral Agency.
7. While the intention of all of the amendments in the SPOLA Bill 2012 amendments are supported in principle, further clarity is sought regarding the enablement of the Queensland Planning Provisions and the implications of the cost provisions as outlined below.

Costs Provisions

8. The SPOLA Bill 2012 proposes to amend section 457(1) of the SPA to provide that, "*Costs of a proceeding, including an application in a proceeding, are in the discretion of the court but follow the event, unless the court orders otherwise*". As such, while the court will retain discretion in making orders as to costs, the SPOLA Bill 2012 introduces a presumption that costs will be awarded to the successful or winning party to a proceeding. The extent to which the Court will depart from this presumption will depend on the factors it considers in exercising its discretion.

9. It is understood that the specific factors guiding the exercise of the Court's discretion under section 457 are to be contained in amendments to the *Planning & Environment Court Rules*. The content of the new Rules is currently being considered by the Court, and the explanatory memorandum states that the costs provisions will not commence until the new Rules are promulgated.
10. The LGAQ and Council of Mayors (SEQ) maintains that it is important that any rules governing the Court's discretion about costs should not be based simply on a party's level of success in a proceeding. Doing so has the potential to inhibit decision making and public participation in the planning process.
11. There are also obvious difficulties in determining what "the event" is in the context of planning cases, particularly in relation to appeals against decisions on development applications. Unlike matters of commercial law where there tends to be a clear outcome in favour of one party, it is common in planning law for cases to be largely determined by way of compromise.
12. For instance, in an appeal against conditions imposed by a Council, a developer may succeed in relation to a number of conditions, but fail in its appeal against the balance of the conditions. It is quite unclear how the Court would exercise its discretion in cases like this, as it is clear that neither the Councils, nor the developer, succeeded wholly in the proceeding. It may be the case that the proposed Rules will provide clearer guidance on how the Court will exercise its discretion in these scenarios where no party has an outright victory.
13. Another example is where a Council's refusal of a development application is overturned by the Court, but only after the developer has made substantial ameliorative changes to the proposal during the appeal process. In those circumstances, while the Council has not been successful in defending its original decision, the Council has clearly achieved a better planning outcome for the community by eliciting an improved development proposal. It would be concerning if the Council was required to pay costs in those circumstances due to "the event" being the overturning of its original decision.

RECOMMENDATION

14. The LGAQ and Council of Mayors (SEQ) seek further consultation on the details of the subsequent amendments to the *Planning & Environment Court Rules*.
15. Any increased risk of costs being awarded against Councils is concerning. In the absence of adequate consultation and the transparent and equitable amendment to the Rules, it is recommended that alternate approaches are considered; such as only amending the triggers for considering costs where proceedings have been instituted for the purposes of delay or where a party has been frivolous and vexatious, or requiring a third party appellant to establish that it will suffer material detriment before an appeal may proceed.

Queensland Planning Provisions to apply to IPA Planning Schemes

16. The SPOLA Bill 2012 seeks to enable the amendment of the Queensland Planning Provisions (QPP) to allow its application to IPA planning schemes. As such, once the QPP is amended, any provisions contained therein which are stated as applying to existing IPA planning schemes will prevail to the extent of any inconsistency with the provisions in the various planning schemes.
17. While the final amendments to version 3 of QPP have not yet been released, the Explanatory Notes to the SPOLA Bill 2012 foreshadow that:

"It is intended that the QPP will provide a maximum (highest) level of assessment for certain low risk operational works which will apply in all local government areas – for example, compliance assessment is the highest level for certain low risk operational works."

18. The Council of Mayors (SEQ) and the LGAQ have demonstrated through the Development Assessment Process Reform – Operational Works and Large Subdivisions Project that significant operational efficiencies can be achieved through better approaches to managing risk in development application assessment processes. This Project specifically identified engineering works (based on risk) that should not need regulation, could be approved through an accredited third party assessment model, or code assessable.
19. Further clarity is sought on whether there will be further implications for IPA planning schemes in addition to prescription of levels of assessment for certain operational works.

RECOMMENDATION

20. The LGAQ and Council of Mayors (SEQ) seek further consultation on the finalisation of the QPP and the definition and scope of low risk operational works.

Removal of Master Planning and Structure Planning Arrangements

21. The LGAQ and Council of Mayors (SEQ) recognise the challenges with the existing master planning and structure planning arrangements. These amendments are supported provided that, in parallel, the State Government implements an agreed streamlined plan making process.

RECOMMENDATION

22. The Department of State Development, Infrastructure and Planning should provide suitable resources to support local governments where necessary to ensure a timely transition.

Should any questions or concerns arise in relation to this response, please feel free to contact Mr Luke Hannan, LGAQ Manager – Planning, Environment and Social Policy on (07) 3000 2226 or luke_hannan@lgaq.asn.au.