



16 December 2019

Committee Secretary
State Development, Natural Resources and Agricultural Industry Development Committee
Parliament House
George Street
Brisbane Qld 4000

Email: sdnraidc@parliament.qld.gov.au

Dear Committee Secretary,

The Local Government Association of Queensland (LGAQ) welcomes the opportunity to provide a submission on the *Implementation of the Spit Master Plan Bill 2019* (the Bill), which was introduced to Parliament on 26 November 2019.

The LGAQ provides comments specifically on the proposed amendments to the *Planning Act 2016* (sections 29-31 of the Bill), relating to compensation provisions for an 'adverse planning change'.

The LGAQ Policy Statement 2019, is the definitive and collective voice of local government in Queensland and includes the following long-standing and agreed policy positions in relation to compensation under the Queensland planning framework [underline included for emphasis]:

- 6.1.1.11 *Local government opposes the extent of the compensation provisions in current planning legislation, and only supports limited provisions for compensation based upon certain criteria being met before councils would be liable. Compensation rights should only be preserved where an applicant can establish that they have suffered an immediate and demonstrable loss and claims for compensation should be eliminated where there is no substantive restriction on continuing use of the land for existing lawful purposes and where the only loss is loss of the speculative possibility of future development for some other purpose.*
- 6.1.1.12 *Compensation should not be available where local planning instruments are made or amended to manage risks associated with natural hazards, including flood, bushfire, landslide, storm tide inundation and coastal erosion.*

The LGAQ supports the policy intent of the proposed *Planning Act 2016* amendments to 'correct an unintended outcome of the current wording and reflect the scope of compensation rights that were available under the repealed *Sustainable Planning Act 2009* (SPA)' (page 11, Explanatory Notes to the Bill).

However, based on confidential legal advice obtained by the LGAQ in preparing this submission, it is recommended that further amendments be made if the transitional provisions are retained, to more equitably achieve the intended policy outcome.

Implications for Queensland councils

Overall, the risk of the proposed amendment to section 31 of the *Planning Act 2016* is likely to be low given that it seeks to make clear (or perhaps reinstates) the position under the SPA and would be consistent with the more flexible interpretation of existing section 31.



The more significant risk, however, is where a council has in fact relied on the strict interpretation of existing section 31 of the *Planning Act 2016*, in the belief that no compensation will be payable, and the council:

- (a) makes an adverse planning change;
- (b) refuses a superseded planning scheme request; and
- (c) assesses and decides a development application under the new planning scheme.

Given the limited time the *Planning Act 2016* has been in force and the time it takes to amend a planning scheme, the number of affected councils is not likely to be high. However, where this has occurred, a council may find itself in a position where compensation will be payable despite the council relying on a strict interpretation of section 31 at the time.

Furthermore, while the proposed amendments to the transitional provisions give an 'affected owner' a new or further opportunity to claim compensation, the proposed amendments do not equally provide an affected council with an opportunity to reconsider the adverse planning change, superseded planning scheme request or any subsequent development application made under the new planning scheme.

For this reason, the LGAQ recommends that provisions be made within the scope of the proposed transitional provisions to also allow a council to reconsider any decisions made in reliance on the strict interpretation of section 31 of the *Planning Act 2016* at the time (i.e. that compensation was not payable).

Recommendation: The LGAQ recommends the proposed amendments to the *Planning Act 2016* outlined in the Bill, be reconsidered and expanded to provide a more equitable transitional arrangement that allows a local government to reconsider decisions made in reliance on the strict interpretation of existing section 31 of the *Planning Act 2016* (and which result in an adverse planning change), so that a council is not adversely impacted by the prospect of a compensation claim which it may not have believed existed at the time the original decision was made.

Feedback received by the LGAQ from local governments since introduction of the *Planning Act 2016* continues to reinforce the position that existing compensation provisions are inequitable and a risk factor for local government when making changes to a local planning instrument due to the potential for an adverse planning change to be made.

As stated in previous submissions to the State Government, the existing compensation provisions directly conflict with the LGAQ's Policy Statement outlined above and do not equally apply to the preparation of State planning instruments or changes in State mapping, which arguably have a similar (and in some cases, greater) impact on the value of interest in premises.

Given the extensive process a local government must follow when making or amending a local planning instrument (inclusive of State interest review and public consultation), the inclusion of compensation provisions relevant to plan-making are arguably unnecessary and inequitable and should be reviewed holistically (in conjunction with the Minister's Guidelines and Rules (MGR)).

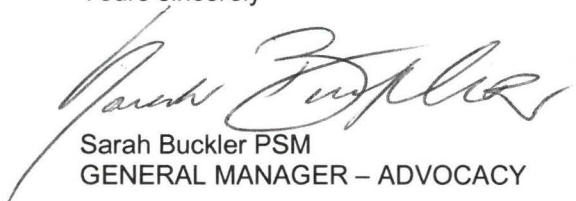
For example, pursuant to section 30(4)(e) and section 30(5) of the *Planning Act 2016*, compliance with Chapter 4 of the MGR negates an 'adverse planning change' and therefore removes grounds for a compensation claim. In its submission to the draft MGR in 2017, the LGAQ outlined a number of concerns, including with Chapter 4 of the MGR which provides the Minister's rules for making a planning change to reduce a risk of serious harm to persons or property on the premises from natural events or processes. Unfortunately, many of the issues raised in the LGAQ submission on the draft MGR remain outstanding and unresolved.



Recommendation: The LGAQ recommends the State Government commit to a holistic review of the plan-making and compensation provisions under the *Planning Act 2016* and the Minister's Guidelines and Rules, and that a local government working group be formed to provide input into this review.

If you have any questions regarding the issues or recommendations outlined in this submission please contact Crystal Baker, Lead – Planning & Development on [REDACTED] or email [REDACTED]

Yours sincerely



Sarah Buckler PSM
GENERAL MANAGER – ADVOCACY