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The Research Director
Transport, Local Government and
Infrastructure Committee
Parliament House
George Street
Brisbane, Queensland 4000

25 November 2011

Dear Sir/Madam,

Re: Sustainable Planning and Other Legislation Amendment Bill 2011

Please find attached comments forming a submission on the Sustainable Planning and Other Legislation Amendment Bill 2011 (SPOLA) for consideration and review by the Transport, Local Government and Infrastructure Committee (refer to Attachment 1 – Ipswich City Council Submission).

These comments have been grouped to reflect the several Acts being amended, which we hope is of assistance to the Committee.

Should you require any further information or clarification on the aspects raised, please contact me on (07) 3810 6251.

Yours faithfully

N. Vass-B

Nick Vass-Bowen
Strategic Planning Manager

Attachment 1 – Ipswich City Council Submission

Comments on the Sustainable Planning and Other Legislation Amendment Bill 2011

Part 3: Amendment of Building Act 1975

1. Separation of the relationship between building and land use matters

It is noted that many building aspects are structural matters with no or limited relationship to planning assessment. It is recognised that these matters, eg foundation requirements, fire safety requirements, frame strength etc should only be assessed through building work under the BCA and QDC.

Other building aspects have clear land use implications and are relevant when preparing planning provisions and in planning assessment. Solar orientation and ventilation (allotment layout and design, amenity etc), setback provisions (amenity / privacy / streetscape character etc) and building height (amenity / privacy / overshadowing etc) are examples of building aspects that are appropriately included in existing planning provisions and are necessary considerations in land use assessment.

Similarly, matters which influence building layout such as end of trip facilities for major development need to be determined at the development approval stage. The complete separation of these matters, as appears to be the intent of the proposed amendments to the BCA, can be difficult as the early consideration of some building matters will result in improved land use outcomes and processing. The spatial assessment of including end of trip facilities in planning assessment is just one example where the referencing of building provisions will improve the overall processing and built form outcome. The consideration of the building provisions to ensure adequate provision is made for these facilities at the planning stage (eg suitable location, sufficient space etc, ie non structural elements) is beneficial and will reduce time delays in instances where sufficient land / space is not allocated at the planning stage. Where a planning scheme is unable to properly regulate these matters, then it is probable that development approvals will need to be amended following building assessment and approval.

The proposed amendments in Clauses 6, 7 and 8 and Clause 62 in Part 7 requires further consideration and amendment to address the appropriate consideration of building matters (generally non structural matters) in planning assessment. The consideration of built form design matters, spatial allocation of facilities such as parking, access and end of trip facilities are appropriate and necessary to land use assessment. The intent to separate all building matters (both structural and non structural) from planning assessment and the rigid approach taken will create confusion, impact on the operation of existing planning schemes and will result in assessment delays.

The *Building Act 1975* should include flexibility for planning instruments to contain alternate measures and to consider planning related matters, to achieve improved planning and built outcomes, such as achieving the outcomes of the Next Generation Planning Booklet produced by DLGP.

Alternatively, if the intent is to restrict consideration of all building matters to building assessment only, resulting in clear separation from what is considered planning matters, the amendment of the BCA / QDC etc to remove all land use assessment related matters is required. Building provisions should not attempt to address planning matters such as building setback, layout and other design provisions relevant in land use assessment other than when meeting clear building related matters, eg fire rating.

It is recommended that all proposed amendments be examined and further consultation undertaken to ensure appropriate checks and balances are in place and necessary flexibility included. The following specific comments are made in relation to the Part 3 amendments:

Clause 7 *Amendment of s 31 (Building assessment provisions form a code for IDAS)*

The wording of s 31(4) is considered to be far too rigid, particularly in combination with the removal of s 32(2) and in consideration of the limited matters (boundary clearance and site cover provisions) discussed as alternatives in s 33. As discussed above, there is significant cross over between building and planning matters and therefore a need for flexibility in approach.

The inclusion of s 31(5) is not supported. The wording of this clause may be read to apply to existing provisions within local planning instruments. Any retrospective application to existing planning provisions will create significant confusion in development assessment and is likely to impact on the operation of existing planning schemes, particularly where there are contingent provisions. In the case of Ipswich, this would not only affect the operation of the planning scheme but also the operation of a Temporary Local Planning Instrument.

Temporary Local Planning Instrument 1/2011 - Flooding Regulation (TLPI) contains provisions relating to flood hazard, floor levels, the use of flood resistant materials and other relevant design aspects for consideration in the assessment of development below the adopted flood regulation line. The proposed early adoption of components of the draft national standard for the Construction of Buildings in Flood Hazard Areas in the QDC (including a 'blanket' floor level approach) is one example where the retrospective application of s 31(5) will create significant confusion. The TLPI already considers the suitability of development, including in regard to floor levels / floor height. The proposed wording in this clause and inclusion of non structural matters such as floor levels in the QDC will have the effect of overriding existing land use controls and creating confusion in the application of the TLPI.

Development below the adopted flood regulation line (as contained in the TLPI) currently triggers planning assessment. Should the QDC include floor level requirements and the like, it will raise questions regarding which aspects of the TLPI remains relevant to planning assessment.

Clause 62 (Insertion of new s 78A Relationship between local planning instruments and Building Act) in Part 7 – Amendment of Sustainable Planning Act 2009 similarly requires further consideration and amendment.

Clause 8 *Amendment of s 32 (Local laws, planning schemes and local government resolutions that may form part of the building assessment provisions)*

The removal of s 32(2) is not supported. The suggestion that this clause is now redundant highlights the need to address the matters raised above and the real need to ensure adequate provision is made for local planning instruments to consider related building matters, particularly non structural matters, appropriate to land use assessment. Where the BCA or QDC is silent on a matter, it is considered appropriate that local provisions may be made to ensure adequate consideration is undertaken through development assessment.

Clause 9 *Amendment of s 33 (Alternative planning scheme provisions to QDC boundary clearance and site cover provisions for particular buildings)*

The inclusion of references to ULDA instrument is noted.

As noted above, greater flexibility is considered necessary for the consideration of building and planning related matters. This section should be expanded to provide greater clarity.

Part 7: Amendment of Sustainable Planning Act 2009

Clause 64 *Amendment of s 126 (Power of Minister to direct local government to take particular action about local planning instrument)*

Concern is raised with Clause 64 proposing amendment to s 126 *Power of Minister to direct local government to take particular action about local planning instrument* and specifically, where it is proposed to include planning scheme amendments within the Minister's powers.

Amendment to section 126(1)(b) should include clarification that proposed amendments to a pre QPP local planning instruments are not required to reflect the standard planning provisions. Amendments to a pre QPP local planning instrument to a QPP compliant standard would result in inconsistency with the remaining body of the planning instrument, subsequent confusion in application and impact on the operation of the existing provisions (including confusion with defined terms, assessment tables, etc).

Clauses 65, 67, 68, 74 & 99 *Ministers ability to make decisions without consulting with anyone*

Clauses 65, 67, 68, 74 and 99 propose to amend sections of SPA to provide that the Minister is not required to consult with anyone before giving a direction or taking an action under the relevant section.

Council does not support the proposed amendment enabling the Minister to make decisions which can significantly affect Council without prior consultation.

Decisions made without Council's consultation do not reflect Council's interests, financial obligations or commitments. These decision may conflict with Council's works program, resolutions made by Council, and generate unreasonable financial and human resource implications.

Chapter 8A *Provisions for Urban Encroachment*

The purpose of Chapter 8A is to indemnifying particular existing lawful uses from legal proceedings relating to aerosol, fume, light, noise, odour, particle or smoke emissions. Of particular interest to Council is s 680ZE *Local government to include registration in planning scheme*. The following comments are in response to s 680ZE:

- Clarification should be incorporated into the Act (ie Chapter 9 Miscellaneous, Division 4 Planning and development certificates) to identify if local government is responsible for including in planning and development certificates information relating to the registered premises noted on the planning scheme.

- There appears to be no provisions for notifying the local government of removal or renewal of a premise on the register (ie renewal or refusal of renewal, or cancellation of registration). It is requested that provisions be included specifying how local government is to be notified in these circumstances to ensure the planning scheme notations remain current.

- As Council is required to note the registered premise in its planning scheme, it is important for Council to be directly consulted during the application process and appropriate weight given to Council's views. It is requested that provisions be included in Chapter 8A to make it explicit that consultation must be undertaken with the Council responsible for the local government area in which a registration of premises is proposed.

- Concern is raised that noting a registered premises in a local planning instrument may lend the notation to be used for development assessment or land use planning considerations. Clarification should be provided that the note on the planning scheme is not intended to be used in the operation of the planning scheme and development assessment.

Part 8: Amendment of Urban Land Development Authority Act 2007

Part 6A *Infrastructure Agreements (Sections 136A to 136D and schedule)*

Ipswich City Council objects to the inclusion of this section.

The inclusion of new Part 6A (Infrastructure Agreements) as outlined in the SPOLA Bill is considered to be unreasonable and prejudicial to the function of local government.

The outcome of local government (as a superseding public sector entity) taking on all rights and responsibilities of the ULDA under infrastructure agreements that local government has not previously been a party too is unacceptable. This obligation passed on to local government is further compounded by the wording in s 136B which fetters future discretionary power of any such agreement.

This section places considerable cost, budgetary and contractual liabilities on local government and is also likely to impact and compete with the delivery of other scheduled and committed local government works.

It is noted that no provision has been made in this section for local government involvement, review or objection to the preparation and signing of infrastructure agreements that are likely to become the responsibility of local government when a UDA ceases, reduces or is revoked and as such this section should be omitted in full.

If the determination is that the section is to be retained, the section requires significant review and amendment to provide sufficient opportunity for local government involvement and review to ensure infrastructure agreements entered into by the ULDA are appropriately prepared with all obligations that may be passed on to local government adequately considered, budgeted and factored into local government work programs. In particular, Council's should have the ability to veto elements of an infrastructure agreement which will place an unacceptable obligation on the Council.

It is requested that opportunity be provided to local government to discuss and review this section prior to the acceptance of this part (whether it is amended or not).