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TLGC

Ms Lyndal Bates
The Research Director
Transport, Local Government and Infrastructure Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Bates

Brisbane City Council is pleased to provide the Queensland Parliament's Transport, Local Government and Infrastructure Committee with a submission regarding the Sustainable Planning and Other Legislation Amendment Bill 2011 (SPOLA Bill 2011) and appreciates the opportunity for Council to have a short extension of time to enable it to comprehensively consider the implications of the legislation.

Please find enclosed a copy of Council's submission. The most significant issue for Council arising from the SPOLA Bill is the provision outlined in clause 129, which enables the continuation of infrastructure agreements beyond the cessation of an Urban Development Area, with Council potentially being liable for implementing the infrastructure agreement. Council strongly objects to this provision with detailed reasons outlined in our submission. I understand an objection to this provision has also been raised by the Local Government Association of Queensland and the Council of Mayors (SEQ).

Should you require any further information about Council's submission please contact Ms Erica Gould, Council's Regional Planning Coordinator on 3178 1363 or email erica.gould@brisbane.qld.gov.au.

Yours sincerely

Graham Quirk
LORD MAYOR

Ref: LM51245-2011

Brisbane City Council Submission to the Queensland Parliament's Transport, Local Government and Infrastructure Committee regarding the Sustainable Planning and Other Legislation Amendment Bill 2011

Overview

Brisbane City Council is pleased to provide the Queensland Parliament's Transport, Local Government and Infrastructure Committee with a submission regarding the Sustainable Planning and Other Legislation Amendment Bill 2011 (SPOLA Bill 2011) and appreciates the opportunity for Council to have a short extension of time to enable it to comprehensively consider the implications of the legislation.

This submission only provides comment on specific sections of the Bill that negatively impact upon Council, where changes are recommended or it outlines significant changes that are supported.

The most significant issues for Council raised in this Bill include:

- Council strongly objects to the provisions outlined in clause 129 (proposed clause s136D of the *ULDA Act*), which deals with the continuation of infrastructure agreements beyond the cessation of the Urban Development Area (UDA). Council is extremely concerned about the possibility of being liable for implementing an infrastructure agreement should an UDA cease to exist. This provision could have significant ramifications, particularly if Council has not been party to the relevant infrastructure agreement and may never have accepted the provisions of the agreement in the first place. Significant impacts could result for Council revenue streams and capital works programs if the liability is transferred to Council under these circumstances.
- Clause 76 (proposed clause s424A(3)(h) of the *Sustainable Planning Act 2009*) includes the provision of only five business days to make representations to the Minister about an application, that has been called in is extremely short and unworkable. At least a 20 business day timeframe is required.
- Council strongly objects to the Minister being given the power to give directions without consulting (outlined in clauses 65, 67, 68 and 74) particularly in relation to a local planning instrument and for directions to local governments and applicants. Council objects to the lack of transparency and inconsistency with natural justice principles.
- Council wishes to highlight that the objectives of the proposed amendments to the *Plumbing and Drainage Act 2002* will only be achieved if sufficient resources are allocated by the Plumbing Industry Council to proactively audit plumbers and enforce compliance with the new Form 4 requirements.

Note that Council is not providing comments on the amendments to the *Coastal Protection and Management Act 1995* and the *Building Act 1975* as they are administrative amendments and have no impact on Council.

Key comments

Sustainable Planning Act 2009

Council wishes to highlight that the majority of changes to the *Sustainable Planning Act 2009* outlined in the SPOLA Bill 2011 are administrative in nature and will have minimal impact on Council's daily operations; however, the Committee is requested to consider the following issues:

- Council has concerns regarding clause 64 (relating to the power of the Minister to direct a local government to take particular action about a local planning instrument) and the intention of it needs to be clarified. This provision could and is easily applied to planning scheme amendments when these are being made but this provision appears to also apply to already existing planning schemes or adopted local plans. The concerns specifically relate to difficulties and complexities in amending whole planning schemes, or scheme amendments that may have only recently been adopted but state and local timeframes don't align. An additional concern arises where the current thinking is towards the Queensland Planning Provisions (QPP) approach but Council sometimes deals with older and very different *Integrated Planning Act 1997* rather than *Sustainable Planning Act 2009* planning schemes so proposals may not align with anything else in the scheme causing major inconsistencies across the city.

There are many examples of new proposals introduced by the Queensland Government which work well in greenfield areas or perhaps a different local government area but don't work so effectively in urban areas, this causes implementation problems if the provisions are applied across the whole city. To force such changes in some areas can have major economic and other ramifications. For example when an industrial zoning combined with buffer distances is applied in some urban areas, this greatly diminishes the ability for particular land uses to continue and as such, strategic and locally specific issues must be considered.

While it is generally agreed that planning schemes should tend towards compliance with the QPP, application of the proposed amendments may prove problematic for Council's planning as there are some fundamental differences between development areas, processes and statutory parameters.

- Clauses 65, 67, 68 and 74 are not supported as they give the Minister the power to give directions without first consulting. Council objects to the lack of transparency and inconsistency with natural justice principles.
- The clarification of ministerial call in procedures (outlined in clause 76 proposed sections 424A-424E of the *Sustainable Planning Act 2009*) is supported; however the provision of five business days to make representations about the call in (clause 76 proposed s424A(3)(h) of the *Sustainable Planning Act 2009*) is extremely short and potentially unworkable. For example Council would not be able to prepare and seek approval for an appropriately considered representation within a five business day timeframe. The period should be extended to 20 business days. If this change does not occur then extension requests under clause 76 (proposed section s424(4) of

the *Sustainable Planning Act 2009*) will be a frequent occurrence, thus delaying the process.

- Clause 76 (proposed s424A(1) of the *Sustainable Planning Act 2009*) needs to be reviewed, if the Minister calls in an application, and directs that the application move to a different stage in the IDAS process, all parties identified in this section of the bill should be given the opportunity to make representations on this issue. Merely making submissions on the question of whether or not to call-in the application is not sufficient.
- Clauses 88-93 are a worthwhile addition to this legislation and are supported. However, for the amendment to 88, Council supports the amendment that allows local governments to index charges set through the ICN (retaining the value of the charge overtime), although the index should not be limited to the lesser of CPI or the maximum charge – the charge should be the greater of or at least equivalent to CPI.
- Clause 94 requires redrafting. In particular it is not clear why the definition of “affected person” is restricted to owners, occupants and lessees where their premises are subject to a development application. It is thought that to achieve the purpose of the changes (proposed section 680C) the restriction on legal proceedings would apply to the approval of the intensification not simply while it is subject to the application. However, this does severely restrict the exemption.

Council also wishes to specifically highlight support for key provisions including:

- Clause 66 which ensures that Council can recover costs from land owners in an area for which a structure plan is being prepared.
- Clause 85 which enables Council to levy infrastructure charges as rates.
- The references to the *City of Brisbane Act 2010*.

Urban Land Development Authority Act 2007

- Council strongly objects to the provisions outlined in clause 129 (proposed clause s136D of the *ULDA Act*), which deals with the continuation of infrastructure agreements beyond the cessation of the Urban Development Area (UDA). Council is extremely concerned about the possibility of being liable for implementing an infrastructure agreement should an UDA cease to exist. This provision could have significant ramifications, particularly if Council has not been party to the relevant infrastructure agreement and may never have accepted the provisions of the agreement in the first place. Significant impacts could result for Council revenue streams and capital works programs if the liability is transferred to Council under these circumstances.

Plumbing and Drainage Act 2002

- Clause 53 lacks a definition of “relevant entity” which is required to ensure that this section of the legislation is correctly implemented.
- Council wishes to highlight that the inclusion of drainage into the notifiable works process poses a risk to Council. Current processes have a Council plumbing inspector produce a drainage plan, this ensures Council records are true and correct. The proposed changes will remove a Council inspector from this process, resulting in the licensed plumbing contractor to supply their record of the installed drainage works. Council currently on sells drainage plans to customers, however, should plans be on-sold in the future using material not produced by a Council officer (plumbing inspector), Council may be liable if the supplied material is incorrect. The Committee is encouraged to

highlight this issue to the Queensland Government and an appropriate response, including a potential disclaimer, needs to be discussed with local governments.

- Council wishes to highlight that the objectives of the proposed amendments to the *Plumbing and Drainage Act 2002* will only be achieved if sufficient resources are allocated by the Plumbing Industry Council to proactively audit plumbers and enforce compliance with the new Form 4 requirements. Local governments will be reliant on plumbers submitting Form 4 for all 'notifiable work' in order to effectively audit and inspect work for compliance with the Standard Plumbing and Drainage Regulation in accordance with its legislative obligations.

Animal Management (Cats and Dogs) Act 2008

- The amendments to this act will assist Council to investigate those dog attacks where the complainant and/or witness has not been able to provide details of the dog's owner/carer but has provided registration details of that vehicle. Council officers have already held discussions with the Department of Transport and Main Roads (DTMR) regarding this proposal; however, Council wishes to highlight that there may be implementation issues with these provisions. DTMR are proposing that Council will need to make an Application for the Release of Information, including supporting documentation to obtain the registration details. Such an approach would be time consuming for officers and delay receiving this critical information that may be urgently needed for an investigation.
- An alternative proposal would be to utilise the current process of Council directly accessing the Queensland Motor Vehicle Registry (QMVR) with the CITEC online search facility as it does for matters such as littering from vehicles offences. The responsibility of utilising the information appropriately would then be placed on Council, without the need to obtain prior approval.

Local Government Act 2009

- Clause 25 of the Bill amends the *Local Government Act 2009* to clarify an authorised officers power to enter premises under section 132(1)(d) of that Act. The same clarification should be made in the corresponding provision of the *City of Brisbane Act 2010* by an additional amendment of section 121(1)(d).

Future input

Should the Committee require any further information about Council's submission please contact Ms Erica Gould, Regional Planning Coordinator on telephone 3178 1363, or via email to erica.gould@brisbane.qld.gov.au or via postal address GPO Box 1434, Brisbane Qld 4001.