

ORDINARY MEETING 7 JULY 2015	5.2
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DRAFT PLANNING AND DEVELOPMENT BILL 2015

Jenny Elphinstone : Senior Planning Officer (D#458027)

RECOMMENDATION:

- A. That Council makes a submission to the Infrastructure, Planning and Natural Resources Parliamentary Committee regarding the Planning and Development (Planning for Prosperity) Bill 2015 raising the issues as outlined in the Council's previous submission on the Planning and Development Bill 2014 dated 14 January 2015.
- B. That a copy of Council's submission on the Planning and Development (Planning for Prosperity) Bill 2015 to the Parliamentary Submission be forwarded to the Local Government Association of Queensland (LGAQ) for inclusion in a joint Council submission to be prepared by the LGAQ.

EXECUTIVE SUMMARY:

Council previously lodged a submission concerning issues with the former State Government's Planning and Development Bill 2014. The legislation has recently been reintroduced to Parliament by Mr Nicholls, Shadow Minister for Infrastructure, Planning, Small Business, Employment and Trade as a Private Members Bill titled the *Planning and Development (Planning for Prosperity) Bill 2015*. The concerns raised in Council's previous submission remain with the new Bill. It is recommended that Council lodge a submission in respect to these concerns with the Parliamentary Commission and a copy of the submission is forwarded to the Local Government Association of Queensland for inclusion in the LGAQ combined submission.

BACKGROUND

In 2014 the former State Government released a Consultation Draft Planning and Development Bill seeking comment from the community including local government. It was intended that the then proposed legislation would replace the *Sustainable Planning Act 2009 (SPA)*. A report was tabled to Council's Ordinary Meeting held on 16 September 2014. Council resolved to make a submission to the then Government regarding five issues that had been identified by Council officers. At the time of the reporting the proposed accompanying Planning and Environment Regulation had not been released.

On the 25 November 2014 the then Deputy Premier and Minister for State Development, Infrastructure and Planning introduced three bills for public consultation being:

- a. the Planning and Development Bill 2014;
- b. the Planning and Development (Consequential) and Other Legislation Amendment Bill 2014; and
- c. the Planning and Environment Court Bill 2014.

A draft Planning and Development Regulation 2014 was released in late 2014. An important change between the *Sustainable Planning Act 2009* and the then proposed new *Planning and Development Bill* was that the assessment process was to be excluded from the main legislation and included in the accompanying regulation. However the detail of the assessment process was only expressed in a further layer of statutory document, the "Development Assessment Rules," and this was never made available.

Council officers together with other local government planners attended a briefing with Department staff in late 2014 and expressed the concerns that had been raised by Council.

The Planning and Development Bill 2014 was introduced to Parliament on 25 November 2014. A report was presented to Council at the Ordinary Meeting held on 16 December 2014 from which Council resolved to lodge a submission to the State Development Infrastructure and Planning Committee regarding the concerns still held by Council. The submission was lodged to action Council's resolution and to record Council's position. At that time the Government was in caretaker mode for the January State election. A copy of Council's submission is included in Attachment 1.

The current Government has stated a position of reviewing planning legislation with an anticipated new Bill to be introduced to Parliament in October 2015.

The Department's website outlines this position as follows.

"The Queensland Government is committed to delivering a better planning system that enables responsible development and delivers prosperity, sustainability and liveability for now and into the future.

Planning reform is an important part of the Palaszczuk Government's plan for Queensland.

"We believe that planning reform can deliver a more efficient system that supports investment and jobs, but don't believe this must come at the expense of community participation or the role of local government", Deputy Premier, Jackie Trad (May 2015).

Planning reform can contribute to:

- *improving the quality of places and spaces*
- *delivering a stronger economy and jobs*
- *making housing more affordable*
- *making sure new and existing communities are supported with infrastructure*
- *protecting important natural resources*
- *managing the impacts of natural hazards*
- *tackling long term challenges like climate change and the ageing population.*

To enable better planning the current planning legislation will be replaced with a new and easy to understand Planning Act."

PROPOSED BILL

Mr Timothy Nicholls, Shadow Minister for Infrastructure, Planning, Small Business, Employment and Trade introduced the Planning and Development (Planning for Prosperity) Bill 2015 together with the associated Consequential Amendments and Planning Court Bills as Private Member Bills on 4 June 2015. The Bills have been referred to the Infrastructure, Planning and Natural Resources Committee for consideration.

These Bills are essentially the same as the suite of Bills introduced by the former Government in late 2014.

LGAQ REQUEST

Council officers were notified of the proposed Bills through the Local Government Association of Queensland (LGAQ) online alert on Monday 22 June 2015.

The Committee's scheduled closure of submissions is 4.00pm on Monday 13 July 2015. The LGAQ has sought Council's comments prior to this date to ensure they are appropriately included in the LGAQ submission.

OFFICER COMMENT

The concerns raised in Council's submission dated 14 January 2014, as included in Attachment 1, remain.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following area outlines where Council has a clear responsibility to act:

Regulator: Meeting the responsibilities associated with regulating activities through legislation or local law.

FINANCIAL/RESOURCE IMPLICATIONS:

No further resources are required as Council already regulates development under the Sustainable Planning Act 2009.

RISK MANAGEMENT IMPLICATIONS:

Concern is raised with the new Bill as:

- a. it may allow continuance of past planning requirements when new best practise should be applied;
- b. it necessitates that Council achieve a LGIP prior to introduction of the new legislation;
- c. it hinders the development of the built environment in a timely manner reflective of identified current and future planning.

INTERNAL/EXTERNAL CONSULTATION:

Council's Planning officers attended a briefing by James Coutts, Executive Director and Sue Pope, Regulation Drafter, DSDIP in respect to the previously proposed Bills. Consultation was undertaken within the planner's officer group in respect to the previously proposed and currently proposed Bills.

Resolution Attachment

Attachment 1 – Council's submission to the Parliamentary Committee dated 14 January 2015.

Attachment 1 Council's Submission to the Parliamentary Committee 14 January 2015



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YOUR REF: P&D Bill
OUR REF: D#437399

14 January 2015

State Development, Infrastructure and Planning Committee
Parliament House
George Street
BRISBANE QLD 4000

Attention: Mr David Gibson MP
Chair
State Development, Infrastructure and Planning Committee

Dear Sir

**DOUGLAS SHIRE COUNCIL SUBMISSION
PLANNING AND ENVIRONMENT BILL**

Council makes the following submission on the Planning and Environment Bill.

The following issues had been identified as being of concern to Council.

1. Purpose of Act

Council previously made a submission on the draft Bill. It is clear that the Sustainable Planning Act 2009 is unwieldy and bulky. The proposed planning legislation has evolved through a process from the initial overhaul of the Local Government (Planning and Environment) Act 1990, through the Integrated Planning Act 1997 and the Sustainable Planning Act 2009. Through the changes of planning legislation there has been an increased roll-in and coordination of associated legislation seeking to achieve a single approval process.

Given the complexity of issues the 'overhaul' has been a lengthy process, cumbersome to both local government and the development industry and has not resulted in the expected delivery of a "better" development assessment system. Given the existing framework there is a need for improved legislation.

The roll-in of associated development legislation has placed Queensland in an enviable position, comparative to other States. There is a need for Queensland to create the best possible system for development within the State to achieve the full potential available for Queensland.

The "Purpose" of the past and current legislation has evolved reflecting the development and community need for planning regulation. The LG(P&E) Act sought to provide a framework for local government and the State, "to facilitate orderly development and the protection of the environment" and "to provide an adequate framework for a person to apply for approval in respect of a development proposal and to provide for appropriate appeal rights in respect thereof."

The IPA improved this introducing regional planning and sought to, "achieve ecological sustainability by--

- (a) *coordinating and integrating planning at the local, regional and State levels; and*
- (b) *managing the process by which development occurs; and*
- (c) *managing the effects of development on the environment (including managing the use of premises)."*

The SPA also seeks to, "achieve ecological sustainability" with similar methods as IPA but with greater accountability and improved delivery.

The "purpose" of the new Bill now includes consideration of 'ecologically sustainable' development and reads:

"3 (1) The purpose of this Act is to facilitate Queensland's prosperity, including through ecologically sustainable development that balances economic growth, environmental protection and community wellbeing."

Concern is held that the Purpose continues to infer that prosperity is achieved through a balance of impacts on the economy, the environment and the community wellbeing.

The new Bill does not define the term “ecologically sustainable development” and it is considered that this will lead to difficulties in the future.

Ecological sustainability is defined in the current legislation, the Sustainable Planning Act 2009 (SPA), as follows

- “s.8 *Ecological sustainability is a balance that integrates—*
- (a) protection of ecological processes and natural systems at local, regional, State and wider levels; and*
 - (b) economic development; and*
 - (c) maintenance of the cultural, economic, physical and social wellbeing of people and communities.*

Importantly the current Act seeks to protect the natural environment and maintain community wellbeing. This is a stronger position for these elements than a balancing as envisaged under the new Bill. **Council seeks that the purpose of planning should be stronger still and seek development to be a threefold impact improving the environment, the economy and the community’s social well being.** A compromise position of “balance” can infer that one element is improved at the expense of the other two.

The lack of definition of “ecologically sustainable development” in the new Bill together with the notion of “balance” rather than improvement of all three elements are significant causes for concern.

2. Period of Approval

Concern is held with the change to the life of a development permit, which the new Bill seeks to extend from four years to six years and the removal of the existing roll-over provisions through the issue of later approvals. No benefit is achieved by increasing the period of approval to six years. Such an increase is likely to lead to growth stagnating as developers ‘sit’ on their approvals. The four year period also gives opportunity for development to occur within the 10 year life cycle of planning scheme reviews.

Concern is held that a six year approval will lead to a holding of development approvals rather than the acting on development approvals within the life of a Planning Scheme. **To encourage development to proceed in a timely manner and have regard to current and changing planning considerations the period of an approval should remain at the current period of four years.**

3. Extension to Existing Approvals

Concern is maintained for the sections regarding extensions to approvals. The situation of 'sitting' on approvals and stagnating development is exacerbated by the new extension clauses. Unlike SPA where the approval is compared to current laws and requirements, an extension under the new P&D Bill may be determined on, "*any relevant matter,*" meaning anything other than "*anyone's personal circumstances, financial or otherwise.*"

Concern is held that insufficient weight will not be given to current planning laws and requirements. Under the proposed new Bill it would be difficult to refuse a request to extend even where the approval was issued under a superseded planning scheme.

The current S.388 SPA, for the extension of an existing approval, clearly defines that considerations of merit are matters for assessment under a new, fresh application and limits the determination to the consistency with current requirements. This is good planning and should not be changed.

The decision period for determining a request to extend is to be reduced from 30 days to 20 days. This is an inappropriately short period considering the cycle of Council meetings and the complexity of some applications.

Council seeks that the existing provisions under s.388 and the 30 day decision period under SPA be reiterated in the new Planning and Development legislation.

4. **Local Government Infrastructure Plan (LGIP)**

Concern is maintained regarding sections about LGIPs. The position remains that where the local government does not have a LGIP in place by July 2016 it cannot levy infrastructure charges. The production of an LGIP is an extensive process requiring internal engineering resources as well as external advice and resources. The current estimate for Council to prepare an LGIP is \$150,000. This is a significant cost for a small rural Council. **Council requests that the dates be extended a further 12 months and/or transitional provisions allow for the continued use of existing policies.**

5. **Draft Planning and Development Regulation 2014**

The proposed new legislation will not necessarily result in improved development or more timely economic prosperity. Several global factors have resulted in poor financial confidence and subsequent decline in local development activity. Development that has occurred has been measured and in the majority of situations reflects economic austerity matching consumer needs rather than grandiose schemes or unsustainable outcomes.

The new Bill continues the need for a local government planning scheme review each ten years. This forward 'decade' planning gives opportunity to review best practise engineering, social, environmental and economic considerations and analyse past, 'worst case' developments. This cycle seeks that poor planning does not reoccur or continue in the future. The new Bill recognises the need for similar local government planning schemes, as per SPA, but also the need for local variation. The Bill will remove the strict SPRP's and QPP's but will provide direction with definitions through the associated Regulation. It is envisaged that the transfer of clauses to the Regulation regarding IDAS will make the assessment system more manageable and less cumbersome. It is envisaged that these changes will assist both developers and regulators.

An important change between the Sustainable Planning Act 2009 and the new Planning and Development Bill is that assessment process is to be excluded from the main legislation and include in the accompanying regulation. While the draft Planning and Development Regulation 2014 has been released there is no inclusion in this document of the new assessment process, being the "Development Assessment Rules." These details are paramount to understanding Council's obligations and requirements for assessing and determining applications. It is vital that Council can understand and plan for staffing needs to ensure development can proceed in a timely manner. It is important that new development be appropriately communicated to the community and sufficient review is given to investigate planning considerations. Council is held with a possible option for developers to 'opt out' of the request for further information stage through the "Development Assessment Rules." Serious concern is raised with this scenario and the proposed assessment process as no detail of the "benchmarks" or "Rules" are available as these are contained in released draft Regulation.

Council requests that the new legislation proceed no further until a draft of the "Development Assessment Rules" are released, communicated to the development and regulatory bodies, opportunity be given for the submission of comments and feedback comments considered.

Other

Should you require further assistance on this matter please contact Council's Senior Planning Officer Jenny Elphinstone by telephone on (07) 4099 9482 or by email on jenny.elphinstone@douglas.qld.gov.au .

Yours faithfully



Linda Cardew
Chief Executive Officer

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