

ORDINARY MEETING**31 JULY 2015****5.3**

DRAFT PLANNING AND DEVELOPMENT BILL 2015

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RECOMMENDATION:

- A. That Council makes a submission to the Department of Infrastructure, Local Government and Planning regarding the Better Planning for Queensland Planning Reform, in particular the proposed new Planning Bill for release in October 2015 raising the issues as outlined in the Officer's report.
- B. That a copy of Council's submission on the Better Planning for Queensland Planning Reform to the Department of Infrastructure, Local Government and Planning 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:

The Department of Infrastructure, Local Government and Planning has release a Direction Paper on planning reform for Queensland and invited Council to provide submissions prior to compiling the new Planning Act. Concern is held with some aspects of the existing *Sustainable Planning Act 2009* and officers have identified various issues that should be addressed to improve development outcomes. It is unclear the extent of changes, as previously envisaged in the *Planning and Development (Planning for prosperity) Bill 2014* are also intended to be included in the new Planning Act. Officers have identified various matters that require further consideration by the Department. It is recommended that the issues identified in the report be referred to the Department for consideration in the development of the new Planning Act.

BACKGROUND

The Palaszczuk Government has stated an intent to undertake planning reform. The Government has released a directions paper that is available online on the Department's website at the following link: <http://www.dilgp.qld.gov.au/resources/planning/directions-paper/better-planning-directions-paper.pdf>

Included in the proposed reform is the delivery of a new Planning Act. The Department is seeking feedback in order to produce draft legislation for broader community consultation with an intention of an anticipated new Bill to be introduced to Parliament in October 2015 and the new planning legislation commencing in the second half of 2016 to replace the *Sustainable Planning Act 2009* (SPA)

Council has previously advised the State Government and the respective Government Committees of issues with proposed Planning and Development Bill 2014 and the Planning and Development (Planning for prosperity) Bill 2015.

PLANNING REFORM AND SPA

It is acknowledged that planning legislation has significantly changed over the last eighteen years with the rolling in of associated licensing and applications systems into the Integrated Development Assessment System, known as IDAS. This change has placed Queensland at the forefront of development assessment reform throughout Australia creating a one-stop shop. As with the introduction of any overarching change through the course of operating, several issues have arisen and improvements introduced.

The previous Newman Government presented the Planning and Development Bill and this has been reintroduced as a member's Bill to which Council has lodged a submission.

Proposed changes under the current government include the introduction of a new Planning Act. While no draft Bill has been released for consultation, Department staff have released a Direction Paper and indicated an intent to pursue many of the changes that were identified through the former government's proposed Bill.

OFFICER COMMENT

Act Structure

While issues have been identified with the complexity and format of SPA, generally the Act is workable and achieves good outcomes. Certainly the formatting and the structure of the Act needs amending to create a more workable process and document.

Development Categories

Significant concern is raised with the changing of development types from the current: exempt, self-assessable, code-assessable, impact assessable and Council's own category of impact assessable (inconsistent) uses. The general public and the development community are familiar with these terms and have an understanding of the associated processes.

The proposed categories, for assessable development being "Standard" and Merit" give little certainty of as-of-right usage and require all "Merit" applications to undergo public notification. There may be an assumption that "Standard" applications have no *merit* and that a "merit" application reflects an assessment against broader considerations than planning scheme codes. It is recommended that the terminology for assessment categories remain with the ability of Planning Schemes to include a category of impact assessable (inconsistent) giving clarity to identifying uses that are considered inconsistent with a planning scheme's desired outcomes.

Significant costs would be involved in converting Council's planning scheme and registration system to reflect new terminology. There is no identified benefit in such a change.

Pre-lodgement Advice

Changes seek certainty in particular for concurrence agency advice / conditions. Given that the concurrence agency assessment is against particular codes provided an application is lodged within a reasonable time and has not changed it would be beneficial for the advice to remain relevant.

Opting out of responding to Further Information Requests

The ability for an applicant to opt out of responding to a request for further information, in particular where a prelodgement has occurred will place significant pressure on Council officers to consider matters in much tighter timeframes. This may detrimentally impact on the assessment manager's decision making. There is currently an ability for an Applicant to respond immediately to a request for further information and provide no or limited information. This current situation places the risk of such a response with the Applicant, in particular having regard to possible future appeal matters.

The extent of information accompanying an application has set minimum requirements under the current legislation and should adequately address applicable code or scheme considerations. The provision of this information is not limited. It is and remains the responsibility of the Applicant. A good application is one that planning clearly identifies and addresses inconsistencies rather than focussing on the attributes that have "ticked the box". It is recommended that the new legislation exclude an "opting out" provision.

Purpose of Act

It is recommended that the new Planning Act seek improved outcomes to the natural environment, the community and the economy rather than a focus of "balancing" impacts. The environment needs to be considered as our highest valued asset as it is a limited resource.

Consideration of Worthiness

The approach that a Scheme cannot prohibit development places local government in a predicament. Clearly some development is inappropriate for some areas. Concern is raised with the traditional position of applications being lodged and the community, through Council, having to defend why an application should not be approved. It is recommended that where an application is required the legislation be changed to require the applicant to substantiate the worthiness of a proposal.

Changes to Community Consultation

There is concern with changes that will require some code assessable applications to be publically notified and the determination of the extent of public notification to be determined by the assessment manager. These changes produce uncertainty. A planning scheme should be structured to reflect uses that are considered acceptable or otherwise in particular zones.

It is noted that there is limited community consultation with the introduction of new planning schemes and scheme amendments. Council's have traditionally addressed this through information community consultation processes. The Act does not limit the ability for a local government to conduct its own public hearings to enable submitters to appear and present their case/considerations.

SARA

There has been considerable benefit achieved in attaining a single response for the State, where there is more than one referral agency. However in instances where there is only a single referral agency the centralised referral seems superfluous.

Infrastructure Charges

Currently a charges notice can only be changed where there is a change to the application or a request to extend the period of approval. Consideration should be given to allow the variation of a charges notice where circumstances change, e.g., Policy change or further information is provided relative to the associated demand.

Ability of a Concurrence Agency to Change a Response

Currently a response can only be changed where the applicant and the Concurrence Agency fully agree to the new response (conditions). There should be flexibility to enable a Concurrence Agency to truly negotiate a request to change a response. There should be greater flexibility to determining concurrence agency appeal matters prior to determining the remainder of the application.

LGIPS

The requirement to have these in place should be extended to beyond July 2016, in particular for smaller Councils.

Open Space

There should be an opportunity to achieve open space through the reconfiguration of land, in particular on greenfield sites, rather than limiting the provision to the purchase of land through LGIP. Local communities need new local parks and amenities with the infrastructure in place, not as a later consequence and subject to ability to supply.

Other Changes

It is unclear the Department's direction is in respect to other issues Council has raised with the recent Member's Bill, in particular, the timing of development approvals, considerations for extensions to approvals (section 383 of SPA) and permissible changes. These issues should be raised with Department officers.

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:

Council has the opportunity to provide the Department with feedback regarding the Directions Paper. The risk of the new Bill not meeting Council's needs is increased if no comment is provided.

Concern is raised with the proposed directions as there remains uncertainty and concern that the new Bill as:

- a. it may be onerous to the community and council by changing terminology where there is no benefit;
- b. it may allow continuance of past planning requirements when new best practise should be applied;
- c. it necessitates that Council achieve a LGIP prior to introduction of the new legislation; and
- d. 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 have discussed the Direction Paper and reviewed outcomes for a local development group workshop held in Cairns.