

ORDINARY MEETING 16 DECEMBER 2014	5.9
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PLANNING AND DEVELOPMENT BILL 2014

Jenny Elphinstone : Senior Planning Officer (D#435458)

RECOMMENDATION:

That Council makes a submission to the State Development Infrastructure and Planning Committee regarding the Planning and Development Bill 2014 raising issues as outlined in the Officer report.

EXECUTIVE SUMMARY:

The new Planning and Development Bill has been introduced to Parliament and the State Development Infrastructure and Planning Committee is calling for submissions to be received by 4pm 19 January 2015. Council considered and raised concern with particular issues with the Bill when it was released as a Draft for Public Consultation. The introduced Bill has included the term “ecologically sustainable development” however does not define the term and continues to seek a balance rather than achievement of improvements to all planning elements: the environment; the economy; and the community well-being.

Specific concern is maintained with the purpose of the legislation, the change from a four-year to a six-year approval, change to the basis on which extensions are determined and the need for a Local Government Infrastructure Plan (LGIP) to be in place.

It is recommended that Council lodges a submission in regards to the concerns outlined in the report.

BACKGROUND:

At the Ordinary Meeting held on 16 September 2014 Council resolved to make a submission to the Department of State Development Infrastructure and Planning regarding the Draft Planning and Development Bill 2014 raising issues as outlined in the Officer report.

The following five issues had been identified in the Officer report are identified as being of concern:

1. the exclusion of considerations of *ecological sustainability* in the purpose of the new Act;
2. the change to the life of a development permit from four years to six years and the removal of the existing roll-over provisions through the issue of later approvals;
3. the extension of the life of an approval to be determined on, “any relevant matter,” meaning anything other than “anyone’s personal circumstances, financial or otherwise;”
4. that Council would need to have a Local Government Infrastructure Plan (LGIP) in place in order to continue to apply infrastructure charges; and
5. the corresponding Draft Planning and Development Regulation had not been released.

Council wrote to the Department of State Development, Infrastructure and Planning regarding the above issues.

PLANNING AND DEVELOPMENT BILL

The Government has now introduced the following new planning bills to Parliament:

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

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.”

There has been no change to the sections regarding the length of the period of approval, the considerations by which a request to extend the period of approval is determined or the need for an LGIP to be adopted by Council and in place by July 2016.

The State Development, Infrastructure and Planning Committee is calling for submissions by 4pm Monday 19 January 2015.

The draft Planning and Development Regulation 2014 has been released.

OFFICER COMMENT:

Purpose of Act

Concern is still 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.”*

Ecological sustainability is defined in the current legislation, the *Sustainable Planning Act 2009*, 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. 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 wellbeing. 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.

Period of Approval

Concern is maintained 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. Concern is held that this will lead to a holding of development approvals rather than the acting on development approvals within the life of a Planning Scheme.

Extension to Existing Approvals

Concern is maintained for the sections regarding extensions to approvals. Concern is held that insufficient weight will not be given to current planning laws and requirements. 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.

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.

Draft Planning and Development Regulation 2014

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. No details of the assessment process, being the “*Development Assessment Rules*,” are included in the released draft of the Planning and Development Regulation 2014. These details are paramount to understanding Council’s obligations and requirements for assessing and determining applications. Concern regarding the lack of detail of the assessment process is maintained.

The Draft P&D Regulation:

1. sets fees for applications and referrals to State agencies;
2. lists Development Assessment Rules (no detail of which included in draft released);
3. sets maximum adopted charges for trunk infrastructure for particular development;
4. sets guidelines for an LGIP;
5. sets the requirements for Tribunals and dispute resolution including fees (note matters to the Planning and Environment Court are now proposed in separate legislation);
6. includes Douglas in the Far North Region;
7. includes the definition of a Party House under mandatory definitions;
8. lists types of transport infrastructure;
9. lists other types of infrastructure which includes aged care facilities;
10. lists prohibited development;
11. lists types of accepted development;
12. lists building work that is assessable development, the relevant referral agency and the referral jurisdiction;
13. lists other assessable development, the relevant referral agency and the referral jurisdiction;

14. lists development that cannot be made assessable development by a local planning instrument (planning scheme or temporary planning instrument);
15. lists requirements for cropping involving forestry for wood production;
16. lists separation distances for particular development from watercourses, protected areas and forests, from native vegetation, from bushfire prone areas and electricity infrastructure;
17. lists requirements for high impact earthworks in a wetland protection area;
18. sets assessment requirements for approving (signing) a plan of subdivision;
19. lists special fire services and referral jurisdiction of Queensland Fire and Emergency Service
20. lists development thresholds for State transport infrastructure referrals;
21. sets assessment for native vegetation clearing; and
22. includes a dictionary of defined uses.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE:

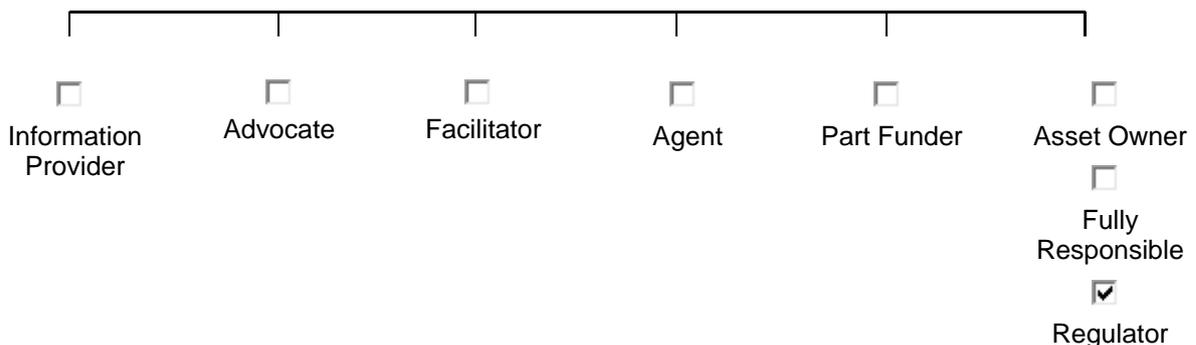
Council's Regulatory Role is prescribed under the Sustainable Planning Act 2009. This is not reflected in Council's Corporate Plan other than "to manage the rate, extent and impacts of changes to the built environment" to "preserve the unique appeal to the Douglas Shire." There is no specific goal for planning regulation in the Corporate Plan.

There are no related activities under Council's Operational Plan.

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 areas outline 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 practice should be applied;
- b. It necessitates that Council achieve a LGIP prior to July 2016;
- c. it hinders the development of the built environment in a timely manner reflective of identified current and future planning.

INTERNAL/EXTERNAL CONSULTATION:

Council officers have had discussions with the Department and participated in a round table discussion with the State Development, Infrastructure and Industry Committee. Consultation was undertaken within the planner's officer group.