

## **Submission - Planning Policy Review**

10 February 2017

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## 1. Executive summary

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The Property Council of Australia welcomes the opportunity to provide comments on the Queensland Government's Planning Policy Review.

These documents form an important step in the planning reform agenda in Queensland, which aims to deliver improved outcomes for all stakeholders.

The Property Council supports all efforts to streamline, clarify, and significantly reduce the overall length and complexity of the planning framework. We are concerned however that through the Planning Policy Review, documentation length has increased, additional matters are now being considered or require a higher level of assessment, and the useability has decreased in parts of the documentation.

A prime example of an additional matter is the inclusion of the Urban Design advice trigger, that could create an additional two layers of assessment. This only sets barriers to development at a time when the Queensland economy, especially in the regions, is crying out for investment. There is opportunity through these documents to enable development to occur. This can be achieved through streamlining the plan making and development assessment process by setting benchmarks and codes that are not barriers, but are facilitators of good development outcomes.

We implore the Government to be bold in setting its economic agenda and have this implemented on the ground through local government planning schemes.

Significant cultural change- both Government and private sector- will be required in order to deliver the full potential of a reformed planning framework.

As we have outlined previously in our submission to the Planning Bills, the Property Council would like to see the legislation accompanied by a five-year implementation plan for local governments, which would provide them with the finances and resources necessary to ensure a smooth and positive transition to the new framework.

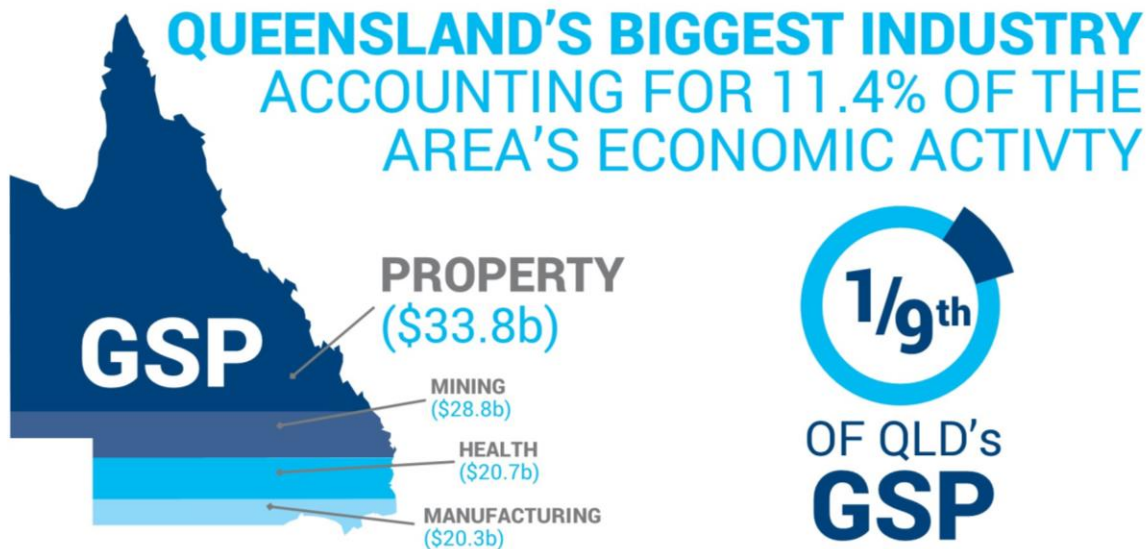
In addition, the introduction of a monitoring and reporting process for local government planning schemes, assessment activities and adoption of legislative requirements- including the infrastructure charges framework- would allow for greater public scrutiny of local government activities, as well as providing a framework for the development of an incentives program to reward innovative and positive local government initiatives.

Furthermore, the Property Council would also like to see the Government continue the development assessment trigger reduction program that has delivered significant time and cost savings to stakeholders over the past three years.

While this program has delivered great benefits to both the Government and private sector, there are still many more development assessment triggers that could be removed or reduced through revised risk thresholds or the development of standard conditions.

We look forward to working with the Government as these reforms are finalised and implemented.

## 2. Property industry's contribution to the Queensland economy



## CREATING JOBS - PROPERTY IS QLD's SECOND LARGEST EMPLOYER

**240,000 JOBS**

PROPERTY INDUSTRY



**147,000 JOBS**  
MANUFACTURING



**70,00 JOBS**  
MINING



The property industry employs  
more people than mining and  
manufacturing combined

## BUILDING PROSPERITY BY PAYING \$22.3 MILLION IN WAGES & SALARIES

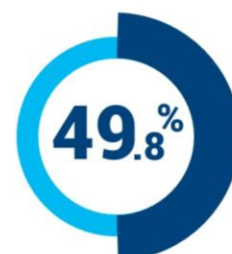


**1 IN 6 PEOPLE**

IN QUEENSLAND DRAW THEIR WAGE DIRECTLY  
AND INDIRECTLY FROM PROPERTY

**\$9.9 BILLION IN TAXES**

PROPERTY IS THE LARGEST SINGLE INDUSTRY CONTRIBUTOR  
PAYING 49.8% OF QUEENSLAND TAXES, LOCAL GOVERNMENT  
RATES, FEES AND CHARGES



### 3. State Planning Policy

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The Property Council continues to support a single State Planning Policy (SPP) for Queensland. However, in our view the draft document does not set a clear strategic intent for how all State interests are to be addressed as a set of policy positions, and places this responsibility on local government.

Our concern is that councils will only address each of the interests individually, and this will likely lead to conflicts that need to be resolved at the development assessment stage.

Being a statutory document comprising assessment benchmarks, the SPP must clearly differentiate background and explanatory information from the sections that development will be assessed against.

The current SPP provides a clear understanding of how the document operates and this should be replicated in this version of the SPP.

Furthermore, careful consideration of the drafting of the outcomes needs to occur. Different terminology is used throughout the outcomes (e.g. protected, maintained, enhanced, conserved, supported, ensured and enabled). If the outcome sought is to “manage” an item, for example, the word “protect” should not be used.

The Property Council is of the view that the word “manage” in most instances better reflects the outcomes sought and supports development occurring whilst mitigating the impacts on, or enhancing, the surrounding built and/or natural environment.

#### **Part B (4) Assessing development applications**

It is difficult to understand why the SPP or part thereof may need to be considered by local government when assessing an impact assessable application, if the SPP or part thereof has already been incorporated in the planning scheme. It seems more appropriate for the SPP to only be considered when such incorporation has not occurred.

#### **Part E – State interest policies**

##### **State interest – liveable communities**

The Property Council is generally supportive of the policy outcomes sought to be achieved through this section. However, we are concerned that the settings promote the introduction of inclusionary zoning.

While it may be appropriate for the Government to incorporate a requirement for development to deliver a component of affordable housing within some public land releases and government-sponsored development projects, the imposition of inclusionary zoning on privately held land is strongly opposed by the Property Council.

##### **State interest – development and construction**

The introduction of this section includes the following statements:

*"Planning schemes should encourage the diversification or expansion of a local economy by not placing barriers or limits on the number, size and mix of businesses. This will support the responsiveness of suppliers to the needs of consumers.*

*For example, the provision of a planning scheme should not restrict the number of a particular type of retail store in any particular local area. Likewise, it is not appropriate to include provisions that seek to consider the potential impact of a proposed business on the viability of established businesses or to place proximity restrictions on particular types of retail stores. To support economic activity in the development and construction sections, business zones should be as broad as possible in their intent and the range of activities they can provide."*

The intent of these statements is not clear. The SPP needs to support the appropriate planning of centres to ensure they are identified and developed in accordance with the needs of the community and that a range of uses are encouraged and supported within the defined centres hierarchy. Such statements in the SPP also need to align with the draft SEQRP.

#### Development and construction policy (2)

The word "appropriate" could be misinterpreted to require the provision of infrastructure in excess of what is needed to service a proposed development. Therefore, the word "appropriate" should be replaced with the word "necessary".

#### Development and construction policy (4)

In our view, this policy should discuss the benefits of development by providing for lifestyle choice, a range of housing types, access to employment, services and entertainment, and supported by infrastructure.

#### Development and construction policy (5)

This policy states, "Efficient development of residential, retail, commercial and industrial development is facilitated by adoption of the lowest appropriate level of assessment that is consistent with the purpose of the zone".

This statement is relevant across all State interests, not just development and construction.

#### Development and construction policy (6)

The wording of this policy should be amended to read as follows:

"Land uses are consistent with the strategic intent of the planning scheme."

### **State interest -Biodiversity**

The policy statements fail to mention that biodiversity matters should be identified based on their value. This is an important inclusion as it will assist in the assessment along with mitigation of impacts management of the biodiversity component.

Furthermore, the policy is heavily weighted towards the *protection* of biodiversity assets. This will, in turn make it difficult to either mitigate impacts or enhance a biodiversity asset from associated development. In this case, we recommend the wording is changed to 'managed' to better reflect the outcome being sought.

### **State interest – cultural heritage**

The Property Council supports the adaptive reuse of local heritage places and local heritage areas, along with ensuring that cultural heritage is retained, as outlined in policy (6).

This policy outcome should also apply to State cultural heritage, however, this is not reflected in policy (3).

### **State interest – natural hazards, risk and resilience**

The Property Council is generally supportive of the clarification provided through the SPP for development outside a coastal management district (3), and development within a coastal management district (8).

We continue to object to coastal management districts being mapped based on property boundaries as opposed to mapping risk areas, needed to manage and mitigate coastal hazards and processes.



#### 4. State Development Assessment Provisions

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The Property Council remains a strong supporter of the State Assessment and Referral Agency (SARA). We welcome the Government's ongoing commitment to this important institution and support the role of SARA as the assessment authority for the State Development Assessment Provisions (SDAP).

Furthermore, we encourage the Government to continue to empower SARA to resolve and make decisions where multiple State codes are triggered and the purpose statements of one or more of the codes cannot be achieved, or where achieving a purpose statement in one code means not achieving a purpose statement in another.

To enable SARA to process applications and make decisions in a timely manner, it is imperative that the purpose statements (which are the highest form of assessment) are drafted with a view to applicants being able to comply with the criteria, given that the majority of the applications are code assessable, for which there is a presumption in favour of approval.

This same overarching principle equally applies to performance and acceptable outcomes. It is also necessary that performance solutions are not drafted as de facto acceptable outcomes.

Where performance outcomes or acceptable outcomes are drafted in the negative (i.e. an action should not occur), there should, to the greatest extent possible, be an alternative provision (i.e. which provides that should the action occur, then it must meet certain criteria).

Also, when drafting outcomes in the negative, it is important to identify whether the "prohibition" is on outcomes/actions which have permanent impacts, rather than, temporary impacts. If the "prohibition" is really about permanent impacts, then this needs to be clearly stated.

The acceptable outcomes should be drafted so that they can be complied with. For example, it is unrealistic to assume that infrastructure, services and utilities will not be located in a State-controlled road.

Due to the length and complexity of the SDAP and the need to refer to guidelines and other instruments, the Property Council's ability to review this document has been limited. For this reason, the Property Council strongly recommends that a third-party review is undertaken of the SDAP before the document is finalised. In addition, the Government should commit to a review of the SDAP after 6 months of operation, when practitioners will be able to provide advice to the Government on the practicality of the codes.

#### Transport codes



The Property Council supports the splitting of the transport sections into the defined categories listed in the SDAP, as while adding to the overall length of the document, the new split provides a simpler format for proponents to navigate.

Of the limited codes we have been able to review, several within the transport codes are of major concern to the property industry. Overall, they are seen as highly risk-averse, placing onerous and often unrealistic requirements on development proponents.

The first code, *AO1.1 Buildings, structures, infrastructure, services and utilities are not located in a state-controlled road*, provides a clear example of this.

### **Urban design**

The Property Council does not support the addition of a new advice trigger for urban design. Furthermore, we believe the current drafting of the code to be unworkable, increasing red tape, cost and adding time to the development assessment process.

In our view, this section of the SDAP adds another two layers of assessment, with applicants being requested to prepare a statement that addresses the eight urban design principles, which will subsequently be assessed by the Office of the Queensland Government Architect (or body recognised by the Government Architect for this purpose) and by SARA, who will provide advice to the assessment manager. This advice could differ to that provided by the council.

Whilst we appreciate the intent of this trigger is to ensure high quality urban design outcomes, which is supported by the Property Council, this trigger and associated code are seen as clumsy mechanisms that will not achieve the Government's intended outcomes.

### **Appendix 1: Development requiring assessment under the Planning Regulation 2017**

Whilst the SDAP document is often complex and difficult to navigate, Appendix 1 provides a clear and concise road map of the assessment requirements and is supported.

## 5. Planning Regulation 2017

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We note that the draft regulation is incomplete as it does not include the South East Queensland Regional Plan State Planning Regulatory Provisions. Given the importance of these components, we would welcome the opportunity to review their incorporation in the draft regulation prior to the final regulations being promulgated.

### Ease of use

Various schedules from the *Sustainable Planning Regulation 2009* (SPR) have been consolidated into Schedule 9 and Schedule 10 of the draft regulation. This consolidation adds bulk to the draft regulation (with many tables remaining blank), and the consolidated schedules are difficult to read and navigate.

Under the draft regulation, it is no longer possible to quickly review a standalone table to determine whether development is assessable, the assessment criteria for development, or the assessment manager for development.

Feedback from our members suggests that retaining the current schedules would increase the ease of use and convenience for developers, consultants and members of the public. We question the need to consolidate the schedules.

## Section 6 – Zones that may be adopted

The Property Council supports the importation from the Queensland Planning Provisions of the zones, purpose statements and colours into the draft regulation, along with the requirement that local planning schemes must include the standard definitions. Not only are these items well recognised within the industry and wider community but they provide a consistent approach across the State.

We note, however, that there is the ability for the Minister in section 6 (3) to approve a change to the purpose statements for zones. If this process is not carefully managed over time, it could lead to a range of different purpose statements across the State for the same zone.

Furthermore, section 16 of the *Planning Act 2016* (PA) states that a regulation may prescribe requirements for the contents of a local planning instrument and that the contents prescribed by regulation apply instead of a local planning instrument, to the extent of any inconsistency.

With this overarching direction in place it is necessary for third parties (developers, consultants and members of the public) to be informed of any approved change of the purpose statement through some form of notation within the planning scheme. Without this notification, a third party would need to assume that the purpose statement in the requirements overrides the planning scheme.

In the interests of consistency, it is the Property Council's view that a change to the purpose statement for a zone should only be granted in exceptional circumstances.

#### **Schedule 7, Part 1, item 2 – Building work declared under Building Act**

This item appears to be the equivalent of Schedule 3, Part 2, Item 1 in the SPR. If so, why does the exemption no longer apply to local government?

#### **Schedule 8, Table 2 development application type, Item 1(d)**

This item appears to be the equivalent of Schedule 6, Table 1, Item 1(d) under the SPR, however, the drafting has been altered. This item refers to prescribed tidal works partly in the tidal area of a non-port local government area and partly in the tidal area of another non-port local government area.

The assessment manager is identified as the "local government". It is not clear which local government is the assessment manager in these circumstances or whether, in fact, both local governments are assessment managers.

#### **Schedule 10, Part 5 Prohibited development – clearing native vegetation other than for a relevant purpose, Item (2)**

The prohibition introduced by this item is the same as that contained in clause 11 of the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016*, which failed to be approved by Parliament in August 2016.

The prohibition removes an existing right to clear vegetation where a particular process has been followed. Given an earlier attempt to remove this right was not supported by the Parliament, this prohibition should be removed from the regulation.

#### **Schedule 10, Part 6, Section 7 – Prohibited development – material change of use on contaminated land**

This section relates to development on land on the contaminated land register and the environmental management register.

The effect of this item is to convert a matter which currently requires compliance assessment (Schedule 18, Table 3, SPR) into prohibited development.

An alternative to prohibiting this development needs to be found. It is desirable that applicants be able to obtain suitability statements either concurrently with development applications, or in compliance with a condition of a development approval.

#### **Schedule 10, Part 12 Koala habitat area, section 13 (1)**

This section relates to a prohibited material change of use in a priority koala assessable development area.

The prohibited development refers to a material change of use of premises "for an urban activity".

The current South East Queensland Koala Conservation State Planning Regulatory Provisions refers to "for an urban activity, other than rural residential development". We query why the reference to "rural residential development" has been removed.

**Schedule 10, Part 13, Table 1 – Prescribed assessable development within limits of a port, Item 3**

This item corresponds with Schedule 7, Table 2, Items 16 & 17 of the SPR. Under the SPR, there would be no referral required under Item 16 if the circumstances identified in Part 13, Table 1, Item 3 applied.

**Schedule 10, Part 15 Local heritage place, Section 15(a)**

This section deals with local heritage places and exempts development that is building work carried out by or for the State or a public sector entity.

Under Schedule 3, Part 1, Table 5, Item 3(1)(a) of the SPR, a local government would also be entitled to this exemption. It is difficult to understand why this has changed.

**Schedule 10, Part 15, Division 2 Assessment by assessment manager, Table 1, Item 1**

This item deals with the category of assessment for assessable development on a local heritage place. It continues to perpetuate the anomaly that exists in the SPR whereby assessable development on a local heritage place may require impact assessment under the regulation, if required by a local categorising instrument, whereas assessable development on a State heritage place only requires code assessment.

There is no reason why both a local and State heritage place are not treated in the same way, and both made code assessable under the regulation.

**Schedule 10, Part 15, Division 2 Assessment by assessment, Table 1, Item 2**

This item deals with the assessment benchmarks for assessable development on a local heritage place. For a local heritage place identified in a planning scheme, it refers to a "preliminary approval". The current assessment criteria in Schedule 5, Table 5, Item 5 refer to a "preliminary approval to which section 242 of the Act applies". Why is the assessment benchmark broader than currently exists?

**Schedule 10, Part 15, Division 3 Table 1, Item 4**

Same comment as above.

### **Schedule 10, Part 26A Urban design**

As outlined in our comments under SDAP, the Property Council does not support the introduction of the urban design advice trigger.

If the Government decides to proceed with this addition, the trigger for applications within the Gold Coast City Council should benefit from the same threshold as applications within Brisbane City Council. This is in recognition of the role of the Gold Coast Architect and high quality urban design outcomes being achieved on the Coast.

As currently drafted, the trigger could apply to a preliminary approval development application (e.g. for a master planned development) and also apply to a subsequent development application for the same development. This would be undesirable.

Finally, the fee for the referral appears to be excessive for the provision of advice.

### **Schedule 18 Prescribed amount**

This schedule identifies the prescribed amount for infrastructure charging. It does not appear to identify the current amounts under the 2016 schedule.

### **Schedule 20, Section 1 Request for approval of plan of subdivision**

Section 1(4) identifies a time limit for giving a plan of subdivision to a local government. We question why this is needed in circumstances where the PA identifies a currency period for approvals and specifically provides, with respect to development approvals for reconfiguring a lot, the timeframe for giving a local government a plan of subdivision in section 85(1)(b).

### **Schedule 20 Approving plans of subdivision, Section 2 Assessing request**

The ability for an applicant to give security to enable a plan of subdivision to be sealed should not be limited to development conditions of operational works approvals but should also be available with respect to conditions of development permits for reconfiguring a lot. Reference should be made to Schedule 19 of the SPR.

### **Schedule 20, Section 3 Deciding request**

Section 3(1) states that if the request complies with the criteria for the request stated in section 2, the local government must approve the request. It is unclear whether the local government has the ability to approve the request if it does not comply with the criteria for the request.

### **Schedule 22 Development impacting on State transport infrastructure, items 1 and 1A**

Items 1 and 1A refer to an "Accommodation activity that is for any combination of the following purposes - ...". Should these items read "Accommodation activity that is for one, or a combination, of the following purposes- ..."?

### **Schedule 24 Publicly accessible documents, Parts 2 & 3**

The Property Council is supportive of the introduction of the option for applications to be assessed by third party assessment managers (chosen assessment managers), where permitted by local governments or the chief executive.

However, the regulations don't appear to address the following issues:

- If the chosen assessment manager ceases to be the assessment manager, how do third parties gain access to documents held by the chosen assessment manager?
- Providing access via inspection or purchase of all documents related to change applications. This is particularly important as it will be possible under the PA to make a change application for a change that is not a minor change.

### **Schedule 25 content of planning and development certificates, Sections 1 (c) and 1 (d)**

The content requirements in sections 1(c) and 1(d) relating to limited planning and development certificates are particularly onerous and complex for local governments. This is compounded by the short time available to local governments to provide limited planning and development certificates. In the circumstances, there is a risk that the information provided may be inaccurate.

If a variation approval is in effect for the premises, the requirement should be for the local government to provide a copy of the variation approval to the applicant for the limited certificate.

If a State planning instrument applies to the premises, this should simply be identified in the limited planning and development certificate, rather than requiring that a summary of the relevant provision of the instrument be provided.

### **Schedule 26 Community residence**

The definition refers to no more than 1 support worker, however, Schedule 6, Item 6 refers to no more than 7 support workers attending the community residence in a 24 hour period.

There needs to be some correlation between these provisions.

### **Additional comments**

With the Housing Code currently being prepared by the Department of Housing and Public Works there is an opportunity to include a section in the regulation for the code to become a mandatory item for local planning schemes.



## 6. Conclusion

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The Property Council would like to again thank the Government for the opportunity to provide feedback to the Planning Policy Review. We look forward to continuing to work with the Government on the planning reform agenda.

If you have any further questions about the Property Council or the detail included in this submission, please contact 07 3225 3000, or [cmountford@propertycouncil.com.au](mailto:cmountford@propertycouncil.com.au).

Yours sincerely



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## 7. Contacts

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