

5 February 2016

Hon Jackie Trad MP  
Deputy Premier  
Minister for Infrastructure, Local Government and Planning; Minister for Trade and Investment  
PO Box 15009  
City East, Qld 4002

*Jackie* **Supporting instruments- planning legislation**

Dear Deputy Premier

Thank you for the opportunity to provide feedback on the planning instruments developed to support the implementation of the new planning legislation.

The Property Council commends the Government on its continued focus on reforming the planning system, with the aim of creating greater certainty and transparency within the current complicated framework.

### **Planning Regulation 2016**

The Property Council notes the considerable amount of work that has been involved in transitioning the current State Planning Regulatory Provisions (SPRPs) into the draft Regulation. We are supportive of the Government's move to simplify the planning framework through removing SPRPs as a planning instrument, and note the clarity of this transition.

The draft Regulation provides a new model of grouping like development triggers in Schedules 10-13. While we note this model will be useful for a number of simple proposals, it will be of little use for the majority, as applicants will still need to consult Schedules 14, 15, 16 and 17 to obtain a complete understanding of the relevant assessable development.

Schedule 8, Item 3, and Schedule 9, Item 2 relate to a material change of use for contaminated land. It is not clear why these provisions are included, and if a suitability statement is required, this should be expressly stated in the relevant legislation.

The timeframe provided in Schedule 28(4)(b) regarding when a plan of subdivision for reconfiguration is to be given to a local government, is not required. If there is no stated date within the development permit, it simply needs to be provided before the development permit lapses.

### **Plan Making Rules**

The Property Council sees the plan making process as the first avenue by which cultural change can be achieved in the State's planning and development assessment system.

Planning schemes, as the primary instrument for the assessment of development applications, have to resolve State interests as expressed through the SPP and regional plans. It is central to the effective operation of the planning system that the process for making and amending planning schemes enables the timely, efficient and consistent identification, incorporation and resolution of State interests.

As understood from local government, the plan making and amending process can be time consuming, expensive and frustrating, which contributes to a reluctance to undertake regular amendments or a complete review process.

The draft Plan Making Rules, as primarily addressed through 1.4 to 1.7 of the Plan making principles, maintain a similar process to that which currently exists under the *Sustainable Planning Act 2009* (SPA) with little further value added.

An ongoing concern for the Property Council is the two touch points with the State Government. Experience shows that the State Interest Check and second State review add considerable time to the plan making process, with limited restrictions applied to how the each agency/department undertakes its review.

Through providing clearer guidance as to the purpose and limitations of each touch point with the State – along with Ministerial discretion regarding whether or not the second touch point is needed- this process could be significantly streamlined.

In particular, the Property Council is keen to see clearer guidance and direction provided to local governments on how State planning instruments are expected to be reflected in planning schemes. This is particularly the case for policy-based documents, where there is no single way in which the policy can be achieved through a planning scheme.

In addition, the current process allows each agency/department the opportunity to review planning schemes for the State Interests that fall within their portfolio. While it is appropriate that the specialist agencies should continue to provide this input, differences in resourcing and competing priorities mean that there is little consistency in the review process itself.

The Property Council is keen to see a process and powers similar to the State Assessment and Referral Agency (SARA) introduced for the purposes of reviewing State Interests as part of the plan making process.

It is envisaged that the Department of Infrastructure, Local Government and Planning (DILGP) would remain the single point of contact for local governments, with all feedback, conditions and requests for further information being determined by DILGP first.

While this currently happens in some situations, there is no consistency in terms of review timeframes for each department or the extent of further requirements and conditioning imposed on local governments. DILGP is in a position to determine whether State agencies have clearly articulated their requirements (for example codes, mapping, scheme provisions) to a level that is of assistance to local governments.

In situations where departments fail to provide their comments/conditions back to DILGP within the established timeframe and parameters, under the proposed framework, DILGP would have the authority to proceed with finalizing the State's response to the plan.

As noted, cultural change within the planning system must start with the plan making process. In order to deliver more streamlined, consistent outcomes, communication between the State and local government must begin long before the State Interest review, and continue through implementation. DILGP must drive that change through State agencies, and the Plan Making Rules need to clearly articulate the change being sought.

The plan making process also needs to address situations where the State's requirements or policy positions change during the review process. Recent examples have seen planning schemes released into the public realm days after the Government has made significant changes to policy positions which affect the integrity of the scheme. Better communication across levels of Government would assist in developing transitional strategies to support those local governments affected by sudden policy changes.

Finally, there are a small number of provisions within the Plan Making Rules that require further attention.

These include 1.5, where there is no process for making the amendments listed; 2.5 regarding consultation, which contradicts the legislation; and Schedule 1, Part 1, which provides an open-ended definition, with no basis by which to assess whether the amendment is considered a minor amendment.

### **Development Assessment Rules**

The current Integrated Development Assessment System (IDAS) is a simple, logical process that is well understood by stakeholders at all levels. While we are aware of a small number of issues with the current process, through cultural change and a few minor amendments, the system could easily be improved.

Pleasingly, the draft Development Assessment Rules (DA rules) maintain many of the fundamentals of IDAS, which should allow for a continued understanding of the basic stages of the development assessment process.

The Property Council is however concerned that through providing too many options for applicants to vary the established process, the system will become unnecessarily complicated.

In addition, there are numerous drafting errors throughout the DA rules, where many processes are incomplete and possible scenarios remain unresolved. It is particularly unclear how the DA rules are proposed to work with the deemed approval process, and opportunities to utilise the stop-the-clock provisions (while supported) need to be further considered.

While not exhaustive, below are a number of comments relating to the various stages of the process for consideration in finalising the DA rules.

Early referral

There is considerable value for applicants in speaking to referral agencies prior to lodging their applications, with many currently taking advantage of this process.

As the opportunity to undertake early referral currently exists, it does not need to be included in the DA rules. If it is retained, it will be important that the DA rules reflect the requirements of the legislation, which they currently do not.

#### Application step

The Property Council supports shortening the timeframes involved in the development assessment process, however acknowledges the importance of allowing assessment managers adequate time early in the process to ensure all parties are aware of their obligations.

As such, the Property Council would support extending the timeframe for issuing a confirmation notice to 10 business days (up from the proposed 5 business days).

The DA rules propose that a confirmation notice will only be required for applications requiring public notification. The Property Council would like to see this requirement extended to include those applications where the applicant has chosen to 'opt out' of an information request. This will ensure that all parties have agreed to the details of the application being assessed before it is too late to request further information.

We also support the introduction of a 'deemed properly made' provision, however to reduce confusion regarding later timeframes, the Property Council recommends that an application is deemed properly made from *10 business days* after the date the application was received (rather than the date the application was received by the assessment manager). This would align it with the proposed extension of time for the issuing of the confirmation notice.

The DA rules also allow applicants to refer their applications prior to receiving a confirmation notice (where required) or the application has been deemed as properly made. This may cause confusion, particularly in situations where an action notice is given by the assessment manager.

Referring the application prior to this will save limited time (maximum 10 business days), however it may lead to unintended consequences for later timeframes and required actions. It also adds confusion to the DA rules, as each possible scenario must be accounted for.

#### Opt-out step

The Property Council supports the introduction of an 'opt-out' for applicants who are confident they have provided adequate information to assess their application, and wish to reduce the overall timeframes of the DA process.

There is some concern that the written evidence required to support those 'opting-out' of an information request may inhibit its usage. For example, the opt-out option would be of most use for simple applications, however these are the least likely to undertake the pre-referral or pre-lodgement meetings required as evidence to support their request.

Other concerns with the opt-out process arise that have not been addressed in the DA rules, such as situations where the application has been altered as a result of an early referral or pre-lodgement meeting; assessment managers may not agree with the advice provided; early referral meetings may have been held with only one agency, where many triggers may apply.

This option could be very useful for applicants, however further consideration needs to be given to its practical implementation.

#### Further information step

The Property Council supports the reduction in timeframes for this stage. We are aware of many instances under IDAS where extensions of timeframes for issuing information requests became common practice. This limitation to 10 business days (where applicable) will assist in reducing overall DA timeframes.

Further revision of this section is required to ensure the timeframes reflect all possibilities, for example, where an application is deemed, where an action notice is given and where a confirmation notice has been given.

#### Referral step

As noted above, the Property Council would support applicants referring their applications only where the application is properly made. This would reduce some of the complexity in the DA rules in accounting for many different situations.

Like the deeming provisions for properly made, the Property Council supports the introduction of 'deemed properly referred'. Also as above, greater clarity is required as to the timing of when an application is considered to be 'deemed properly referred'.

#### Public notification step

Again, the Property Council supports the introduction of a 'floating' public notification step, however seeks to highlight the complexity that must be addressed in ensuring the DA rules account for all situations and consequences that may arise from this flexible timing.

#### Deciding development applications

The DA rules propose two different timeframes for deciding development applications- 30 business days for impact assessment and 20 business days for code assessment.

As in the Property Council's submission on the *Planning Bills 2015* with respect to public notification, we support the standardization of timeframes as much as possible to ensure greater simplicity in the system.

We would support a standard 30 business day decision timeframe, acknowledging that many code assessable applications are as complicated as impact assessable applications, and assessment managers are no longer able to extend assessment timeframes without the agreement of the applicant.

Changes during the appeal period

The Property Council supports the 20 business day timeframe for the negotiated decision period, and particularly the opportunity to extend this timeframe by agreement. It is unclear however, whether the six months referred to in 55(2) is in addition to the six months provided for under the stop-the-clock provisions.

**Draft Infrastructure Designation: Statutory Guideline for Ministerial Designations & Draft Infrastructure Designation: Statutory Guideline for Local Government**

The Property Council generally has limited involvement in infrastructure designations, however we note the current guidelines are considered useful and would support limited amendment.

We are aware of a number of concerns regarding the Statutory Guideline for Local Governments, particularly in terms of delegations and responsibilities of local government. Local governments would be best placed to provide feedback on their internal operations to assist in revising this Guideline.

Thank you once again for the opportunity to provide feedback on the draft planning instruments developed to support the new planning legislation.

If you would like any further information, please do not hesitate to contact me on 07 3225 3000, or [cmountford@propertycouncil.com.au](mailto:cmountford@propertycouncil.com.au).

Regards,

A handwritten signature in black ink, appearing to be 'Chris Mountford', with a long horizontal stroke extending to the right.

Chris Mountford  
**Queensland Executive Director**