

## **Submission on Better Planning for Queensland Directions Paper**

20 August 2015

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## 1. Introduction

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Thank you for the opportunity to provide feedback on the *Better Planning for Queensland Directions Paper* (*directions paper*).

The Property Council has been an active participant in the planning reform discussion since 2013, and is pleased to see the continuation of the reform agenda under the Palaszczuk Government.

It is only through a better planning system that Queensland will be able to see increased land supply, reduce the cost of housing and provide certainty for the community and development industry alike.

The Property Council supports the principles upon which new planning legislation will be based, namely:

- Enabling responsible development
- Stimulating economic growth and innovation
- Ensuring genuine public participation in the planning process
- Delivering clear and concise legislation that supports effective and efficient planning and development assessment

The Property Council has previously provided feedback to the Department of Infrastructure, Local Government and Planning (DILGP) to inform the drafting of new planning legislation. The following comments reinforce the Property Council's position on a number of key elements.

## 2. Summary of recommendations

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1. Retain positive initiatives such as SARA, SPP and primacy of the planning department
2. Simplify the planning hierarchy and strengthen the link between regional plans and planning schemes
3. Promote innovation in planning schemes while retaining standard requirements for key components
4. Simplify complex development assessment decision-making rules
5. Mandate greater community consultation in the early stages of plan-making and regional plan development
6. Retain third party appeal rights
7. Retain discretion of the Court in making costs orders
8. Establish a monitoring and reporting process for local government development assessment activities and adoption of legislative requirements
9. Only use Ministerial call-in powers as a last resort
10. Implement a number of minor changes to create simpler legislation
11. Develop a five year implementation plan to assist local government transition
12. Retain existing compensation provisions

### **3. Property industry's contribution to the Queensland economy**

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The property industry in Queensland creates the homes we live in, the offices in which we work, and the shopping centres and recreational areas where we spend our leisure time.

It has a larger footprint on the Queensland economy than any other industry<sup>1</sup>.

#### **3.1 Contribution to Gross State Product (GSP)**

The property industry directly contributed \$33.8 billion to GSP in Queensland in 2013-14, representing 11.4 per cent of total GSP.

It is estimated to have contributed a further \$49.9 billion to Queensland GSP through flow-on demand for goods and services.

#### **3.2 Contribution to employment**

The property industry directly employed 239,772 full time equivalent (FTE) employees in Queensland in 2013-14, representing 12.1 per cent of the state's workforce.

The industry also supported some 292,684 additional FTE jobs through flow-on activity.

Approximately 27.4 per cent of wages and salaries paid to Australian workers are generated by the property industry.

#### **3.3 Contribution to government revenues**

The property sector in Queensland contributed approximately \$9.9 billion in combined State Government tax revenues and local government rates, fees and charges revenue in 2013-14. This equates to 49.8 per cent of total State taxes and local government rates, fees and charges revenues in 2013-14.

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<sup>1</sup> All the statistics in this section are sourced from AEC group, 2015

#### 4. Better planning and development outcomes

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##### **Retention of positive initiatives**

A number of positive initiatives have been introduced over the past three years that have significantly reduced the complexity of the planning system and led to a more holistic consideration of matters impacting on land use planning.

Initiatives such as the State Assessment and Referral Agency (SARA), State Planning Policy (SPP) and focus on the primacy of the planning department have created greater certainty for communities, the property industry and for governments.

The Property Council is pleased to note the Government's intention to retain these initiatives, and as a further action, would like to see an increased commitment to aligning matters concerning land use planning across all departments.

For example, where matters such as koala conservation and climate change impact on land use planning, it is the Property Council's preference that the planning department assumes responsibility for their implementation within planning instruments.

This would provide greater certainty for stakeholders, and ensure the holistic resolution of matters of State interest.

##### **Stronger relationship and simpler hierarchy of planning instruments**

The directions paper notes the Government's intention to strengthen the relationship between planning instruments. The Property Council supports this, and is keen to see a stronger relationship between regional plans and local government planning schemes.

While the South East Queensland Regional Plan has had many successes, one of its downfalls has been its linkage with planning schemes. This has manifested in some local governments 'choosing' when and/or how they reflect the provisions of regional plans in their local planning instruments.

Through strengthening this relationship via the new legislation, the Property Council anticipates that there will be clearer requirements for the reflection of State instruments in local planning schemes, leading to better planning and development outcomes for all stakeholders.

The proposal to simplify the hierarchy of State planning instruments is supported by the Property Council as it will provide a clearer, more certain planning framework.

As State Planning Regulatory Provisions (SPRPs) can currently be introduced at any time and cover any region or State interest, they introduce an unnecessary level of uncertainty and complexity into the planning system.

With the SPP covering all matters of State interest, there is little need for the retention of SPRPs. Instead, these can be transitioned into the Regulation, rather than being retained as standalone instruments.

Additionally, simplifying the hierarchy provides an opportunity to reinforce through legislation the role of regional plans in resolving conflicts of State interests.

### **Streamlined local government planning schemes**

The Property Council is pleased to note the Government's intention to retain a regular review horizon for local government planning schemes. While many local governments take it upon themselves to undertake regular reviews, a legislative requirement acts as a reminder to them, and provides the Minister with a point of reference, should intervention be required.

The Property Council also supports the continuation of standard requirements for local government planning schemes. There is a concern, however, that the development of new scheme requirements may unnecessarily delay local governments' transition to the new legislation.

It is imperative that mandatory consistency of key components of schemes does not stifle local government innovation in developing new and better ways to implement planning processes.

In streamlining the planning system, it is positive to note the Government's desire to introduce a better process for plan-making, which would encourage local governments to embrace new innovations and update their schemes more regularly.

### **Development assessment**

The proposed simplification of the categories of development to prohibited, accepted and assessable, provides clearer understanding of the types of development in Queensland than the categories currently utilised in the *Sustainable Planning Act 2009* (SPA).

In terms of the proposed categories of assessment for assessable development, the Property Council considers the term 'merit' to provide a more accurate and appropriate reflection of the assessment required of applicants than the current term 'impact'.

Replacing SPA's complex development assessment decision-making rules will be essential in streamlining the development assessment system and facilitating better development outcomes.

## **5. Real community engagement and participation**

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As noted in previous submissions, the Property Council is keen to ensure that the new legislation provides a greater focus on community consultation in the early stages of the local government plan-making process.

Too often, individual developments are held up by community concerns that should have been resolved earlier in the planning process. Better engagement would provide an opportunity to address these concerns early on and create greater certainty for all stakeholders.

Similarly, the Property Council would like to see a greater emphasis placed on informing owners of potential impacts on their property rights as a result of a new or amended planning scheme e.g. potential downzoning to reflect newly obtained flood mapping.

Recent experience has shown that not enough emphasis has been placed on creating community awareness of the potential impacts of planning schemes on property rights.

The proposed statutory guideline introducing minimum standards for community engagement and the retention of public notification timeframes would go some way towards addressing current concerns.

The Property Council is also pleased to see the retention of a minimum 60 day consultation period for regional plans.

As regional plans provide the first step in identifying areas where urban development will occur, engaging the community in this process further assists in resolving concerns and establishing understanding regarding the future of development in their local area.



## **6. An open, transparent and accountable planning system**

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### **Third party appeals**

Where the community has had an opportunity to provide input into the formation of a planning scheme and a non-compliant development application is lodged against it, the Property Council supports the retention of public notification requirements and their associated third-party appeal rights.

Third parties should have an opportunity to lodge a submission and appeal the approval of a development application where legitimate concerns relating to planning issues have been raised.

The Property Council does not, however, support the proposal to remove the discretion of the Planning and Environment Court to determine the most appropriate allocation of costs for appeal proceedings on a case-by-case basis.

Removing the discretion of the Court and establishing pre-determined criteria for how costs are- or are not- to be awarded would risk opening the Court system to vexatious litigation where a party can bring forward an appeal with no risk of incurring costs themselves, but may be able to inflict significant time and cost delays on another party.

The independence of the Court when making a costs order must be retained to ensure fairness and a level playing field for those utilising the Court system.

### **Public reporting**

At present, there are no publicly available reports on the development assessment activities of local governments in Queensland. While the Development Assessment Monitoring and Performance Program (DAMPP) used to provide a high level overview of development assessment activity, it has not been released since 2011-2012.

The Property Council is keen to see the Government introduce more rigorous monitoring of the development assessment activities of local governments, which moves beyond reporting on timeframes and towards a system of rewarding performance and innovation.

Rather than undertake these activities 'in-house', an independent body such as the newly established Productivity Commission would be well placed to take on these monitoring functions. The Government would then be well placed to introduce an incentive program based on this independent feedback.

There is also currently no mechanism for monitoring or reporting on local governments' implementation of the new infrastructure charging framework.

The Property Council is keen to see a formal mechanism established that will not only be responsible for monitoring the progress of local governments' implementation, but also for ensuring the framework is being implemented in accordance with the legislative intent.

Finally, the Property Council has previously expressed its desire to see the introduction of independent reviews of local government planning schemes. This would ensure that planning schemes provide an accurate reflection of the community's expectations for growth in their local area.

Additionally, it would identify any inconsistencies or errors in the scheme, making sure that local governments' investments in their planning framework facilitate the outcomes they desire.

### **Ministerial powers**

In order to deliver confidence and certainty to stakeholders, it is the Property Council's position that Ministerial call-in powers should only be used as a last resort to achieve a policy or planning outcome, or to resolve an impasse between stakeholders during the development assessment process.

## 7. Legislation with a better structure that solves the problem

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The Property Council supports the development of new legislation that will provide an easily navigable, simplified framework for planning and development assessment in Queensland.

In addition to the proposals noted above, the Property Council supports a number of minor changes to the legislation that would facilitate simpler legislation:

- Revising the structure (order) of the legislation;
- Retaining existing provisions regarding the infrastructure charges framework;
- Retaining deemed approvals;
- Simplifying currency periods for development approvals;
- Simplifying 'properly made' requirements, and maintaining assessment managers' discretion to excuse noncompliance;
- Allowing owners' consent to be provided before an application has been decided, rather than at lodgement;
- Removing the precautionary principle and a renewed focus on facilitation;
- Introducing third party assessment of applications;
- Moving the jurisdiction of the Court to its own legislation; and
- Introducing exemption certificates for inappropriately categorized development.

## 8. Practical support for local governments

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### Transition

Support for local governments will be imperative in delivering the on-the-ground outcomes the new legislation hopes to affect.

The transitional provisions must provide local governments with simple methods by which they can convert their current SPA schemes – or part of them- to take advantage of the new legislation.

Part of this process will require a continued focus on culture change. This is not only at the local government level, but must also target the State Government, community and the development industry.

The development of a five year implementation plan would allow local governments to receive the support they need. This could include training (at various stages throughout the five year period), mentoring, development of new computer and IT systems, and the establishment of cross-sectoral implementation committees.

Funding will be critical in securing a commitment from local governments to change their established systems and processes to take advantage of the new legislation. The Property Council notes the funding allocated to planning reform in the Government's 2015-16 Queensland Budget, and is keen to see a significant proportion of this invested in the local government transition process.

In assisting local governments, it will be imperative that clear timeframes and expectations are established. This will allow the Government to reward those local governments that are meeting or exceeding these expectations, and provide greater resources to those that are failing to do so.

The proposed extension of the timeframe for completion of Local Government Infrastructure Plans (LGIPs) is an example of the need for the State Government to play a greater role in establishing clear expectations and monitoring the performance of local governments.

### Compensation claims

In providing greater support for local governments, the Property Council seeks to ensure that the property rights of Queenslanders are not eroded.

Through ongoing engagement in the planning reform process, the issue of legislative provisions relating to compensation has frequently been raised.

Section 706 of the SPA (relating to injurious affection) is well understood by all stakeholders and provides a balance between allowing local governments to rezone land where there is a significant risk as a result of a natural hazard, and protecting the property rights of the owners of the land.

In situations where a land parcel is so severely impacted that there are no appropriate uses, the local government is able to downzone the land parcel while being protected under the legislation from compensation claims.

If this section of the legislation were to be removed, it would allow for the blanket rezoning of land with no right to compensation, even in areas where great development outcomes could have been achieved through the imposition of development conditions by the local government.

Its removal would in effect undermine the property rights of thousands of Queenslanders whose properties are potentially affected by natural hazards.

## 9. Conclusion

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The Property Council would like to again thank the Department for the opportunity to provide feedback on the *Better Planning for Queensland (Directions Paper)*.

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

Yours sincerely



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