



1 September 2009

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Dear Minister

Sustainable Planning Bill

As regards the Sustainable Planning Bill that is currently before the Legislative Assembly, UDIA (Qld) has reviewed the Bill's contents, taken the advice of a number of members, including developers, legal practitioners and planning consultants, and now requests that you consider moving amendments to the Bill during the Committee stage of debate as follows.

1. CLARIFICATIONS AND RECTIFICATIONS

The following clauses appear to contain errors:

A) RESPONDING TO INFORMATION REQUESTS

With respect to making changes in response to information requests, the Bill provides as follows:

“354 Effect on IDAS—changes about matters relating to submissions or information requests

(1) This section applies to a changed application if—

(a) the change is not a minor change of the application; and

(b) the assessment manager is satisfied the change—

(i) only deals with a matter raised in a properly made submission for the application; or

(ii) is in response to an information request; and

(c) the notification stage applied to the original application; and

(d) the change was made during the notification stage or after the notification stage ended.

(2) IDAS does not stop for the changed application.

(3) However, the notification stage must restart or be repeated unless the assessment manager is satisfied the change would not be likely to attract a submission objecting to the thing comprising the change, if the notification stage were to apply to the change.

(4) Also, if the notification stage applies to the changed application, the assessment manager can not decide the application until the notification stage has ended.”

This provision appears to have been inadvertently restricted to changes made during or after the notification stage. Given that the notification stage cannot commence until all responses to information requests have been given, there is no opportunity to actually change a development application in response to an information request. This is clearly contrary to the intent of the provision.

We suggest that the section be amended as follows:

“354 Effect on IDAS—changes about matters relating to submissions or information requests

(1) This section applies to a changed application if—

(a) the change is not a minor change of the application; and

(b) the assessment manager is satisfied the change—

(i) only deals with a matter raised in a properly made submission for the application; or

(ii) is in response to an information request.

(2) IDAS does not stop for the changed application.

(3) Subsection (4) applies to development applications where:

(a) the notification stage applied to the original application; and

(b) the change was made during the notification stage or after the notification stage ended.

(4) The notification stage must restart or be repeated unless the assessment manager is satisfied the change would not be likely to attract a submission objecting to the thing comprising the change, if the notification stage were to apply to the change.

(5) Also, if the notification stage applies to the changed application, the assessment manager can not decide the application until the notification stage has ended.”

B) PUBLIC NOTIFICATION

The requirement under the Bill for applicants to provide two notices in relation to public notification is onerous, in particular, the additional requirement to give a notice to the Council within 5 business days of carrying out the last of the notification actions. This provision appears to have arisen from initial considerations of a rolling notification period able to start at the discretion of the applicant.

The bill provides as follows:

“300 Applicant to give assessment manager notice about particular matters

If the applicant carries out notification, the applicant must, within 5 business days after the day the last of the actions mentioned in section 297(1) is carried out, give the assessment manager written notice of the day the last of the actions is carried out.”

We suggest that a single notice of compliance is adequate, especially given the shortened timeframe for giving such notice as proposed under the Bill. Accordingly, we believe that clause 300 should be removed.

2. SIGNIFICANT POLICY ISSUES

We make the following comments in relation to policy issues associated with some of the clauses of the Bill having regard to the practical workings of the planning system in Queensland:

A) CODE ASSESSMENT

On a plain reading of the text, the Bill removes the presumption in favour of code compliant applications. The Bill provides as follows:

“326 Other decision rules

(1) The assessment manager’s decision must not conflict with a relevant instrument unless—

(a) the conflict is necessary to ensure the decision complies with a State planning regulatory provision; or

(b) there are sufficient grounds to justify the decision, despite the conflict; or

(c) the conflict arises because of a conflict between—

(i) 2 or more relevant instruments of the same type, and the decision best achieves the purposes of the instruments; or

Example of a conflict between relevant instruments—a conflict between 2 State planning policies

(ii) 2 or more aspects of any 1 relevant instrument, and the decision best achieves the purposes of the instrument.

Example of a conflict between aspects of a relevant instrument—a conflict between 2 codes in a planning scheme

(2) In this section—

relevant instrument means a matter or thing mentioned in section 313(2) or 314(2), other than a State planning regulatory provision, against which code assessment or impact assessment is carried out.”

In contrast, the IPA provides as follows:

“3.5.13 Decision if application requires code assessment

(1) This section applies to any part of the application requiring code assessment.

(2) The assessment manager must approve the application if the assessment manager is satisfied the application complies with all applicable codes whether or not conditions are required for the development to comply with the codes.

(3) Subject to subsection (2), the assessment manager’s decision may conflict with an applicable code only if there are sufficient grounds to justify the decision despite the conflict, having regard to—

(a) the purpose of the code; and

(b) if they are not identified in the planning scheme as being appropriately reflected in the planning scheme—

(i) State planning policies, or parts of State planning policies; and

(ii) for the planning scheme of a local government in the relevant area for a State planning regulatory provision—the provision; and

(iii) for the planning scheme of a local government in a designated region—the region’s regional plan.

Note—

For declared master planned areas, see also section 2.5B.69 (Assessable development requiring code assessment).

(4) However, if the decision is made under subsection (3)(a) and the assessment is against a code in a planning scheme—the assessment manager’s decision must not compromise the achievement of the desired environmental outcomes for the planning scheme area.”

[Our emphasis]

A separate section, section 3.5.14 of the IPA, provides for applications that require impact assessment.

As you are aware, the industry predominantly relies on securing finance from financial institutions to undertake development projects. Given the current economic circumstances this change to IPA will radically affect the decision-making process by investors and financial entities as it reduces the level of certainty associated with code applications and significantly increases development risk to such an extent that finance for projects will be adversely affected to an unacceptable degree.

In our view it is essential it is to retain that certainty and, as such, we suggest that the following amendments are made to clause 326.

“326 Other decision rules

(1) The assessment manager’s decision with respect to an application requiring impact assessment must not conflict with a relevant instrument unless—

(a) the conflict is necessary to ensure the decision complies with a State planning regulatory provision; or

(b) there are sufficient grounds to justify the decision, despite the conflict; or

(c) the conflict arises because of a conflict between—

(i) 2 or more relevant instruments of the same type, and the decision best achieves the purposes of the instruments; or

Example of a conflict between relevant instruments— a conflict between 2 State planning policies

(ii) 2 or more aspects of any 1 relevant instrument, and the decision best achieves the purposes of the instrument.

Example of a conflict between aspects of a relevant instrument— a conflict between 2 codes in a planning scheme

(2) The assessment manager must approve an application requiring code assessment if the assessment manager is satisfied the application complies with all relevant instruments.

(3) Subject to subsection (2), the assessment manager's decision to approve an application requiring code assessment must not conflict with any relevant instrument unless:

(a) the conflict is necessary to ensure the decision complies with a State planning regulatory provision; or

(b) there are sufficient grounds to justify the decision, despite the conflict; or

(c) the conflict arises because of a conflict between—

(i) 2 or more relevant instruments of the same type, and the decision best achieves the purposes of the instruments; or

Example of a conflict between relevant instruments— a conflict between 2 State planning policies

(ii) 2 or more aspects of any 1 relevant instrument, and the decision best achieves the purposes of the instrument.

Example of a conflict between aspects of a relevant instrument— a conflict between 2 codes in a planning scheme

(4) In this section—

relevant instrument means a matter or thing mentioned in section 313(2) or 314(2), other than a State planning regulatory provision, against which code assessment or impact assessment is carried out."

Additionally, in relation to deemed approvals, one of the key risks that may impact the effectiveness of this approach will be Council issuing a preliminary approval prior to the due date and then requiring the applicant to upgrade this to a development permit through the negotiated decision notice process (similar to process already adopted by Redlands where development permits can't be issued within the statutory timeframe). The negotiated decision notice process has no timeframe and therefore potentially is a worse scenario than currently exists without the deemed approval – given Council will not be accountable for the timeframe taken to issue the negotiated decision notice. Also, where deemed approvals are applied, the conditions may be unacceptable resulting also in a negotiated decision notice request. In these circumstances, there should also be a deemed approval associated with a negotiated decision notice not issued within a set timeframe say 20 business days. For other cases such as where deemed approvals don't apply, a timeframe for the negotiated decision notice process would still be beneficial even if there is no statutory penalty. The outcome would be similar to the current due date for decision notice for other development types where the deemed approval option is not available, as this timeframe would provide a measure for accountability.

Also, in relation to deemed approvals, it would be preferable that, if a deemed approval notice is issued, that the standard conditions automatically apply (ie without first allowing the Council 10 business days to set conditions) but with a process to vary these conditions by agreement between the assessment manager and applicant to ensure they are applicable, reasonable and relevant to the type of development applied for.

B) COMPLIANCE ASSESSMENT

Presently, clause 398 is drafted in very broad terms to permit a condition of development approval to require compliance assessment against a broad range of instruments (listed in sub-clause (3)). There is a concern that the clause will be used to draft conditions which defer consideration of matters which ought properly be assessed at the application stage to

some later time. The use of the conditions power in this way would be contrary to principles of certainty and finality, and should not be permitted. With that in mind, we suggest that clause 398(3) be amended as follows, to appropriately limit the matters against which a condition may require compliance assessment to be undertaken. Clause 398(3) should be amended to insert, "... a code of standard contained in..." in the second line of the clause following the word "... with".

C) LEGAL REPRESENTATION AT THE DEVELOPMENT DISPUTE RESOLUTION COMMITTEE

The Bill contains a provision which prohibits a person having legal representation before the Development Dispute Resolution Committee (**Committee**). The Bill provides as follows:

"560 Right to representation at hearing

(1) A party to an appeal or a proceeding for a declaration may appear in person or be represented by an agent.

(2) A person must not be represented at an appeal or a proceeding for a declaration by an agent who is a lawyer."

The argument for reconsidering this aspect of the Bill is that the jurisdiction of the tribunal (referred to in the Bill as the Committee) has expanded significantly to include a range of highly technical matters in complex legal issues. It is important that, where the Committee will consider complex or technical legal issues, a party's access to justice is not hindered by prohibiting that person from engaging legal representation.

Further, this legislation encourages the growth of a new class of advocate in Queensland Tribunals and could even include disbarred lawyers as they would not be in breach of the relevant Legal Practitioners legislation.

Moreover, consumers would not be protected by trust requirements and the ethical and governance standards that have been put in place by successive Attorneys-General. This is a most remarkable and concerning departure from State Government precedent.

Accordingly, we suggest that the following amendments are made to clause 560:

"560 Right to representation at hearing

(1) A party to an appeal or a proceeding for a declaration may appear in person or be represented by a lawyer, or, with the leave of the committee, an unpaid agent.

D) DEVELOPMENT APPLICATION (SUPERSEDED PLANNING SCHEME)

Under the IPA, landowners currently have a 2 year period in which to make a development application (superseded planning scheme) (**DA(SPS)**).

The Bill provides a reduced time period for the making of a request for a DA(SPS). The Bill provides as follows:

"95 Request for application of superseded planning scheme

(1) A person may, by written notice given to a local government, ask the local government—

(a) to apply a superseded planning scheme to the carrying out of assessable development, prohibited development or development requiring compliance assessment that was, under the superseded planning scheme, exempt development or self-assessable development; or

(b) to assess and decide a proposed development application under a superseded planning scheme; or

(c) to—

(i) accept a development application for development that is prohibited development under the planning scheme and was assessable development under a superseded planning scheme; and

(ii) assess and decide the application under the superseded planning scheme; or

(d) to assess and decide a request for compliance assessment under a superseded planning scheme; or

(e) to—

(i) accept a request for compliance assessment of development that is assessable development or prohibited development, and was development requiring compliance assessment under a superseded planning scheme; and

(ii) assess and decide the request under the superseded planning scheme.

(2) However, the notice may be given to the local government only within 1 year after the day—

(a) the planning scheme or planning scheme policy creating the superseded planning scheme took effect; or

(b) the amendment of a planning scheme or planning scheme policy creating the superseded planning scheme took effect.”

We are of the view that the existing 2 year period should be retained. There are problems with limiting the period in which to make a DA(SPS) request to one year. It means that applicants or landowners have a very short period of time in which to evaluate the best use of the land under the superseded planning scheme and prepare a development application. This, in combination with potentially shorter timeframes and procedures for changing planning schemes, means that the ability to claim compensation will be further eroded. Some of the specific problems that may arise are as follows:

- the cost involved in investigating the development potential of land at the time of making a request is too great;
- development potential of the land is complex and a period of 12 months is insufficient to identify specifically the form of the development which a DA(SPS) should seek;
- the true development potential of the land may not be able to realised for many years and any application is premature.

Accordingly, we recommend making the following amendments to clause 95:

“95 Request for application of superseded planning scheme

(1) A person may, by written notice given to a local government, ask the local government—

(a) to apply a superseded planning scheme to the carrying out of assessable development, prohibited development or development requiring compliance

assessment that was, under the superseded planning scheme, exempt development or self-assessable development; or

(b) to assess and decide a proposed development application under a superseded planning scheme; or

(c) to—

(i) accept a development application for development that is prohibited development under the planning scheme and was assessable development under a superseded planning scheme; and

(ii) assess and decide the application under the superseded planning scheme; or

(d) to assess and decide a request for compliance assessment under a superseded planning scheme; or

(e) to—

(i) accept a request for compliance assessment of development that is assessable development or prohibited development, and was development requiring compliance assessment under a superseded planning scheme; and

(ii) assess and decide the request under the superseded planning scheme.

(2) However, the notice may be given to the local government only within 2 years after the day—

(a) the planning scheme or planning scheme policy creating the superseded planning scheme took effect; or

(b) the amendment of a planning scheme or planning scheme policy creating the superseded planning scheme took effect.”

E) LIMITATION ON COMPENSATION

It has come to the Institute’s attention that the current limits on compensation, which will be continued in the new Act, are operating in a way that was unintended. Specifically, where changes to Planning Scheme Policies (**PSPs**) or Priority Infrastructure Plans (**PIPs**) have the effect of requiring land dedications or setbacks as part of conditions for a development approvals (over and above the imposition of monetary payments), it is our view that the right to compensation should be available to landowners through the DA(SPS) process.

Section 5.4.4 of the IPA, which is repeated in clause 706 of the Bill, provides as follows:

“5.4.4 Limitations on compensation under ss 5.4.2 and 5.4.3

(1) Despite sections 5.4.2 and 5.4.3, compensation is not payable if the change—

(a) has the same effect as another statutory instrument, other than a temporary local planning instrument, in relation to which compensation is not payable; or

(b) is about a type of development that, before the coming into effect of this Act, would normally have been dealt with under a local law, including, for example, the filling or drainage of land or the clearing of vegetation; or

(c) is about the relationships between, the location of, or the physical characteristics of buildings, works or lots, but the yield achievable is substantially the same as it would have been before the change; or

(d) is about a designation made under chapter 2, part 6; or

(e) is about the matters comprising a priority infrastructure plan; or

(ea) is about the matters comprising a planning scheme policy to which section 6.1.20 applies; or

(g) removes or changes an item of infrastructure shown in the scheme; or

(h) affects development that, had it happened under the superseded planning scheme—

(i) would have led to significant risk to persons or property from natural processes (including flooding, land slippage or erosion) and the risk could not have been significantly reduced by conditions attached to a development approval; or

(ii) would have caused serious environmental harm, as defined in the Environmental Protection Act 1994, section 17, and the harm could not have been significantly reduced by conditions attached to a development approval; or

(i) is about any of the matters comprising a structure plan for a declared master planned area.”

[our emphasis]

The Explanatory Note to IPA states that:

“These exceptions are:

...

- o if the change is about the timing of development shown in a benchmark development sequence. A benchmark development sequence does not affect the use rights applicable to land, but merely introduces a preferred sequence of development as a basis for assessing the impacts of “out of sequence” or unanticipated development;*
- o if the change is about the matters that must be dealt with by an infrastructure changes plan as specified under clause 5.1.4(2). For example, these matters include the methodology for calculating the charge, and the areas, or types of lot, work or use to which the charge applies;*
- o if the change removes or changes an item of infrastructure shown in the planning scheme. Clause 2.1.24 indicates that an intention to provide infrastructure shown in a planning instrument does not create an obligation on the State or a local government to provide the infrastructure. Similarly, this clause provides that the removal of an item of infrastructure shown on a planning scheme does not incur compensation.”*

Under the Bill, clause 706 provides:

“706 Limitations on compensation under ss 704 and 705

- (1) *Despite sections 704 and 705, compensation is not payable if the change—*
- (a) has the same effect as another statutory instrument, other than a temporary local planning instrument, in relation to which compensation is not payable; or*
 - (b) is made to include a mandatory part of the standard planning scheme provisions; or*
 - (c) is made to include a part of the standard planning scheme provisions (the standard part) and the effect of the part is substantially similar to the part of the planning scheme or planning scheme policy replaced by the standard part; or*
 - (d) is about the relationships between, the location of, or the physical characteristics of buildings, works or lots, but the yield achievable is substantially the same as it would have been before the change; or*
 - (e) is about a designation made under chapter 5; or*
 - (f) is about the matters comprising a priority infrastructure plan; or*
 - (g) is about the matters comprising a planning scheme policy to which section 847 applies; or*
 - (h) removes or changes an item of infrastructure shown in the scheme; or*
 - (i) affects development that, had it happened under the superseded planning scheme—*
 - (i) would have led to significant risk to persons or property from natural processes (including flooding, land slippage or erosion) and the risk could not have been significantly reduced by conditions attached to a development approval; or*
 - (ii) would have caused serious environmental harm and the harm could not have been significantly reduced by conditions attached to a development approval; or*
 - (j) is about any of the matters comprising a structure plan for a declared master planned area.”*

[our emphasis]

It is clear that these exceptions indicate that a DA(SPS) is not to be used to avoid new infrastructure charges. However, as discussed above, the problem arises where land dedications or setbacks are required as a result of changes to PSPs or PIPs – that is, conditions are imposed requiring land dedications or setbacks (rather than just monetary contributions).

The assessment of an application must be done against a PSP or PIP (as applicable). If a change to a PSP or PIP mandates the imposition of a setback or dedication of land through conditions (in addition to monetary payments), an applicant should be entitled to have a development application assessed against a superseded planning scheme or, if the Council elects not to assess it against the superseded planning scheme, be entitled to apply for compensation.

Accordingly, it is our view that the following amendments be made to clause 706(f) and (g):

“706 Limitations on compensation under ss 704 and 705

(1) Despite sections 704 and 705, compensation is not payable if the change—

...

(f) is about an infrastructure contribution imposed under a priority infrastructure plan; or

(g) is about the payment of money by way of an infrastructure contribution under a planning scheme policy to which section 847 applies; or”

F) PROPERLY MADE APPLICATIONS AND MANDATORY SUPPORTING INFORMATION

The Bill requires that for an application to be properly made it must be supported by the mandatory supporting information. The Bill provides as follows:

“260 Applying for development approval

(1) Each application must -

(a) be made to the assessment manager; and

(b) be in the approved form or made electronically under section 262(3); and

(c) be accompanied by any supporting information the approved form states is mandatory supporting information for the application; and

(d) be accompanied by—

(i) if the assessment manager is a local government—the fee for administering the application fixed by resolution of the local government; or

(ii) if the assessment manager is another public sector entity—the fee prescribed under a regulation under this or another Act; and

(e) if, under section 263, the consent of the owner of the land the subject of the application is required for the making of the application—

(i) contain or be accompanied by the owner’s written consent; or

(ii) include a declaration by the applicant that the owner has given written consent to the making of the application; and

(f) if, under section 264(1), the application is required to be supported by evidence mentioned in the subsection—contain or be accompanied by the evidence.

Note—

A single application may be made for both a preliminary approval and a development permit.

(2) The approved form—

(a) must contain a mandatory requirements part; and

(b) may make provision for mandatory supporting information for the application.

(3) In making an application, the applicant must give the information required under the mandatory requirements part of the approved form.

261 When application is a properly made application

An application is a properly made application if—

(a) the application is made in compliance with section 260(1) and (3);
and

(b) if the application relates to land in a declared master planned area and the structure plan for the master planned area requires a master plan for the development—the master plan has been approved or a master plan application for the master plan was made with or before the making of the application.”

[our emphasis]

The requirement that mandatory supporting information be provided in order for an application to be a properly made application may, in combination with the removal of the deeming provisions in relation to not properly made development applications, lead to an increase in the number of development applications which are not properly made.

Further, the Bill contains a requirement that an assessment manager give the applicant, within 10 business days of receiving a development application, a notice setting out the reasons the assessment manager is not satisfied with the application.

There is no provision for what occurs if a development application is not properly made but the assessment manager fails to give the notice. There are no longer provisions deeming applications to be properly made. As a result, a development application which was not properly made may continue to be assessed as if it was a properly made application and be approved even though there was never a properly made application. The Bill should be amended to reinsert the deeming provisions with respect to development applications to avoid an increase in the number of not properly made applications.

We suggest that the requirement for the provision of supporting information be amended as follows:

“260 Applying for development approval

(1) Each application must -

(a) be made to the assessment manager; and

(b) be in the approved form or made electronically under section 262(3); and

(c) be accompanied by any supporting information the approved form states is mandatory supporting information for the application; and

(d) be accompanied by—

(i) if the assessment manager is a local government—the fee for administering the application fixed by resolution of the local government; or

(ii) if the assessment manager is another public sector entity—the fee prescribed under a regulation under this or another Act; and

(e) if, under section 263, the consent of the owner of the land the subject of the application is required for the making of the application—

(i) contain or be accompanied by the owner’s written consent; or

(ii) include a declaration by the applicant that the owner has given written consent to the making of the application; and

(f) if, under section 264(1), the application is required to be supported by evidence mentioned in the subsection—contain or be accompanied by the evidence.

Note—

A single application may be made for both a preliminary approval and a development permit.

(2) The approved form—

(a) must contain a mandatory requirements part; and

(b) may make provision for mandatory supporting information for the application.

(3) In making an application, the applicant must give the information required under the mandatory requirements part of the approved form.

261 When application is a properly made application

(1) An application is a properly made application if—

(a) the application is made in compliance with section 260(1) and (3); and

(b) if the application relates to land in a declared master planned area and the structure plan for the master planned area requires a master plan for the development—the master plan has been approved or a master plan application for the master plan was made with or before the making of the application.

(2) Notwithstanding subsection (1), an application is taken to be a properly made application if:

(a) the assessment manager receives an application that is not a properly made application; and

(b) the assessment manager does not give a notice under section 266; and

(c) the application complies with the requirements in section 260(1)(e) and (f)."

G) LAPSING OF DEVELOPMENT APPLICATIONS

Changes should be made to the lapsing provisions with respect to development applications.

The difficulties created by the current lapsing provisions in the IPA, which remain relatively unchanged in the Bill with the exception of the 'reviving' provisions, have been acknowledged by the Planning and Environment Court on a number of occasions, including by His Honour Judge Robin QC in *Calvisi Holdings Pty Ltd v Brisbane City Council & Anor* [2008] QPEC 19 where His Honour noted that:

"The unfortunate consequence, of which I've more than once had occasion to be critical, is that under the preceding subsection (1), taking the Act literally, the development application lapsed; that is a highly inconvenient and one might say absurd situation where, as here, everyone involved is proceeding with greater or less expedition towards advancing the application in expectation of having it duly decided"

The Bill proposes some minor changes to the way in which lapsing of applications occurs, by providing a 5 day grace period in which an application can be 'revived'. For example, clauses 93 and 94 of the Bill provide:

“273 Lapsing of application if material not given

(1) *The application lapses if the applicant does not comply with section 272.*

(2) *However, if the application is revived under section 274(1), the application lapses if the applicant does not comply with section 274(2).*

274 When application taken not to have lapsed

(1) *An application that, other than for this section, would lapse under section 273(1) is revived if, within 5 business days after the application would otherwise have lapsed, the applicant gives the assessment manager written notice that the applicant seeks to revive the application.*

(2) *If the application is revived under subsection (1), the applicant must comply with section 272 before the end of—*

(a) 5 business days after giving the notice mentioned in subsection (1); or

(b) the further period agreed between the assessment manager and the applicant.

(3) *If the application is revived under subsection (1), for the purpose of the IDAS process the application is taken not to have lapsed under section 273(1).”*

The lapsing provisions will result in a continuation of the overly technical approach which will often require applicants to seek a declaration where both the Council and the applicant have proceeded on the basis that it was properly made. The 5 day “reviving” provision provides little comfort to applicants where the timeframe has truly been forgotten. The ability to revive seems somewhat illusory.

Further, given the shorter timeframes that apply to many of the steps in the IDAS process under the Bill, there would appear to be a greater chance that timeframes will be missed.

We suggest that the following amendments be made to allow for lapsing to occur on the basis of the assessment manager giving notice. If no notice is given, the application does not lapse. Accordingly, we would suggest the following amendments to clauses 273 and 274:

“273 Lapsing of application if material not given

(1) *The application lapses if:*

(i) the applicant does not comply with section 272; and

(ii) subsequent to the applicant not complying with section 272, the assessment manager gives notice to the applicant that the application lapses as a result of the non-compliance referred to in (i).

(2) *The application is taken to have lapsed on the day that the assessment manager gives the notice referred to in section 273(1)(b).*

274 When application taken not to have lapsed

(1) *An application that, other than for this section, would lapse under section 273(1) is revived if, within 5 business days (or such further period agreed between the assessment manager and the applicant) after the application would otherwise have lapsed, the applicant complies with section 272*

(2) *If the application is revived under subsection (1), for the purpose of the IDAS process the application is taken not to have lapsed under section 273(1).”*

A similar change would need to be made to clauses 164 & 165, 279 & 280, and 302 & 303. Further, some consequential amendments may need to be made to clause 359.

We note, however, that clause 170, which relates to public notice of a master plan application, does not seem to be drafted in the same way as the clauses referred to above and it is, therefore, not open to making the same type of change to that clause.

H) REQUIREMENTS RELATING TO THE CONSENT OF A RESOURCE OWNER

An amendment to the Bill correcting current difficulties with resource owners consent would, in our view, be highly beneficial. Currently the requirement is to obtain “resource entitlement” for certain applications. This does not appear to have been changed under the Bill. It results in major difficulties and delays in obtaining consent from State Government agencies for the lodgement of development applications affecting state resources (eg awnings over footpaths, development of roads to be closed, etc). The interpretation by these agencies is that they are giving an entitlement rather than simply a consent to the lodgement of the application, and therefore is a greater and more lengthy process / negotiation. It would be better that it simply be consent to lodgement so as to move on with the development application and then obtain the actual entitlement prior to works commencing.

I) COURTS EXCUSATORY POWERS

His Honour Judge Rackemann has made the point that the Courts excusatory powers would allow a deemed approval to be revoked and it was questioned whether that was intended. In our view, it does not appear to have been intended and should be the subject of an amendment in the Committee stage of the debate.

UDIA (Qld) thanks you for considering our representations in respect of the Sustainable Planning Bill.

Yours sincerely

Urban Development Institute of Australia (Queensland)



Brian Stewart

Chief Executive and General Counsel