

LAND PLANNING B - INDEMNITY

1. Introduction

- 1.1 The Brisbane City Council (**Council**) refers to the invitation of the Queensland Floods Commission of Inquiry (**Commission**) to provide a Submission in response to the draft findings and recommendations provided to Parties on the topic of Land Planning B - Indemnity (**Land Planning B**).
- 1.2 Council's response is set out below however, should the Commission propose to amend Land Planning B based on the submission of any other party, Council requests that it be given the opportunity to provide further submissions in response.
- 1.3 Land Planning B concludes that the evidence is insufficient for the Commission to form a view about the utility of introducing a statutory indemnity and endorses the Queensland Government's proposal to investigate the viability of doing so.
- 1.4 Council supports:
- (a) the endorsement by the Commission that the Queensland Government investigate the viability of introducing statutory indemnities;
 - (b) the submission made by Gold Coast City Council ¹; and
 - (c) the submission of the Local Government Association of Queensland (September 2011) at paragraph 2.9.
- 1.5 Council is willing to assist the Queensland Government to undertake its investigations on this topic (to the extent such assistance is required). Further, Council sets out below some matters which it considers might usefully form part of the matters to be investigated on this topic.

2. General observations

- 2.1 Council considers the two distinct compensation issues that should be the subject of any investigation are:
- (a) injurious affection in relation to changes to a planning scheme or planning scheme policy (together referred to as a **Scheme**); and

¹ Gold Coast City Council Second Submission (undated) pages 2 and 3.

- (b) protection for local governments against liability for advice given, the provision of information and planning decisions made in relation to flooding of properties.

3. Injurious affection

3.1 The *Sustainable Planning Act 2009* (Qld) (SPA) contains the current regime for the payment of compensation for injurious affection.

3.2 From Council's perspective, the current SPA provisions are problematic in two respects:

- (a) *firstly*, the scope of the limitation on the entitlement to compensation in relation to flooding is uncertain.

Currently, changes to a Scheme that have the same effect as a State instrument or implement the standard planning scheme provisions provide a limitation on liability for compensation.

Council is concerned, however, that the current State planning instruments do not provide a sufficient level of detail to provide Council with confidence that amendments that either expand upon or further detail the operation of the State planning instrument would fall within the limitation.

- (b) *secondly*, the entitlement to compensation resides in a broad class of potential claimants, leading to the potential for multiple claims of entitlement to compensation in respect of a single property.

3.3 In Council's view, the following measures should be considered:

- (a) the limitation on compensation in relation to flooding in section 706(1)(i) of SPA should be broadened, so that local governments are provided with greater confidence in making amendments to a Scheme in relation to flooding standards.
- (b) any alteration of flood standards in Schemes should be implemented through a State planning instrument (so as to fall within the limitation on compensation under the SPA). This could be achieved through a State planning regulatory provision or State planning policy (for example the current review of State Planning Policy 1/03) or over time through the standard planning scheme provisions.

4. Statutory indemnity

- 4.1 There are currently no specific statutory protections in Queensland legislation for local governments with respect to the provision of flood information, the assessment of flooding issues or the imposition of restraints on development of land which is impacted by flooding constraints.
- 4.2 Local governments should be provided with a statutory indemnity for the provision of flood information and the assessment of flooding issues or the imposition of constraints on development on land where flooding is in issue.
- 4.3 Such a statutory indemnity could cover, amongst other things:
- (a) advice furnished in good faith by the local government relating to the likelihood of any land being flooded or the nature or extent of any such flooding; or
 - (b) anything done or omitted to be done in good faith by the local government in so far as it relates to the likelihood of land being flooded or the nature or extent of any such flooding.
- 4.4 Without limiting 4.3 (a) and (b), the statutory indemnity could apply to:
- (a) the preparation or making of a local planning instrument, or the approval or refusal of a development application, or the approval or refusal of a request for compliance assessment, under SPA;
 - (b) the imposition of any condition in relation to an approval of a development application referred to in paragraph (a);
 - (c) the carrying out of flood mitigation works;
 - (d) the failure to upgrade flood mitigation works in response to projected or actual impacts of climate change;
 - (e) the provision of flood related advice and information so far as it relates to the likelihood of land being flooded or the nature or extent of any such flooding; and
 - (f) any other thing done or omitted to be done in the exercise of a local government's functions under SPA or any other Act.