

18 January 2016

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Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
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Environment
Institute of
Australia and
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SOUTH EAST QLD DIVISION

Re: EIANZ's Submission to Parliamentary Committee on Draft Planning Bill 2015

The Environment Institute of Australia and New Zealand (EIANZ) Southeast Queensland Division is pleased to submit its comments on the Draft Planning Bill 2015. The Institute acknowledges the efforts being made by the Queensland Department of Infrastructure, Local Government and Planning to amend the Planning Act and develop a workable set of Planning Instruments.

The EIANZ is the leading professional body in Australia and New Zealand for environmental practitioners, and promotes independent and interdisciplinary discourse on environmental issues. On all issues and all projects the Institute advocates good practice environmental management delivered by competent and ethical environmental practitioners.

General Comments:

We commend the efforts made by staff of the Department of Infrastructure, Local Government and Planning to engage the community in Planning Reform.

EIANZ has commented previously on whether major changes to Queensland's planning legislation was warranted, and provided recommendations on the approach needed to for the draft Planning Bill to achieve the Bill's stated objectives. Recognising that it may be too late to make further major changes, EIANZ would welcome the opportunity to engage with the State Government, to undertake future planning reform. We suggest that this be undertaken in collaboration with other professional bodies with expertise in policy and operational aspects of planning and plan implementation. Alternatively, an optional additional simplified integrated development assessment (IDAS) process could be incorporated into the draft Bill as discussed below.

EIANZ agrees with the analysis provided in the explanatory notes on the *Sustainable Planning Act 2009 (SPA 2009)* that the following elements are sound:

- integrating State, regional and local policies in plan making;
- applying an integrated, structured development assessment system to produce well-balanced decisions; and
- ensuring there are appropriate dispute resolution opportunities including the efficient resolution of technical matters.

While the move to performance based assessment in 1997 was perceived at that time as having merit, experience with the *Integrated Planning Act 1997* and *SPA 2009* indicates that this move has not lived up to expectations. Rather, for it to be successful, it requires an appropriate higher level of technical expertise within State and Local Governments. Perhaps this aspect of the planning system needs careful consideration.

EIANZ endorses the stated objectives of the Bill of delivering better planning for Queensland by:

1. enabling better strategic planning and high quality development outcomes;
2. ensuring effective public participation and engagement in the planning framework;
3. creating an open, transparent and accountable planning system that delivers investment and community confidence;
4. creating legislation that has a practical structure and clearly expresses how land use planning and development assessment will be done in Queensland; and
5. supporting local governments to adapt to, and adopt, the changes.

EIANZ is of the view that the draft Planning Bill is unlikely to achieve the above objectives better than *SPA 2009*, which the new Planning Bill would replace. This conclusion is based on the following:

- The focus of the Bill is still on the process to be followed rather than on how to achieve the outcomes that the community expects, which are:
 - Maximisation of certainty of achieving desired land use and land development outcomes (both for them and development proponents).
 - Anticipating and minimising future conflicts between incompatible developments.
 - Provision of appropriate infrastructure to support any proposed development.
 - Planning schemes which lead to preferred land use or transparency in any departure from a preferred use. [Currently, the general community perceives planning schemes as facilitating development (irrespective of its merit or location)].
 - Simple low cost, transparent and time-efficient processes. [The current IDAS process is perceived as being unnecessarily complex and protracted and appears to be aimed at administrative simplicity rather than one of efficiency and effectiveness.
 - IDAS being clearly linked to the intent of planning schemes and, if handled more expeditiously, being able to be equally applied to all types of development, including those of resource industries and State Government. The need for separate assessment processes for resource industry and priority State projects is questioned. A less complex process may be unattractive to statutory planners and lawyers, but would likely be of benefit to the community at large including the government of the day. The need for a plethora of documentation, while likely to be well intended, only serves to demonstrate the need for statutory planners to improve their communication skills.]

EIANZ would like to know whether, having reviewed the draft Bill and associated guidelines, the members of Parliamentary Committee have come to the conclusion that the documents are likely to be easily understood by the community at large. Additionally, does the Parliamentary Committee believe that the community will consider that their best interests are being served by the proposed legislation?

Based on EIANZ's review of the draft Planning Bill, its Explanatory Notes, the draft Planning Regulation, and the various draft guidelines, we are of the opinion that:

- Objective 1 of the draft Planning Bill is unlikely to be achieved until planning schemes move from being an instrument aimed at regulating development to one of implementing the land use and development outcomes sought by an informed community. EIANZ perceives that there may be a lack of trust shown towards State and Local Governments because of perceived excessive and unpredictable discretion of those involved in determining the outcomes of planning schemes. What is needed is greater predictability in decision-making that would come from the use of quantifiable and measurable criteria to determine both a preferred land use, as well as to assess the

positive and negative impacts of any development proposal. This is needed, if for no other reason, than to make accountable those charged with decision-making.

- Objectives 2 and 3 will likely not be met by the Bill, and accompanying guidelines in their current form. As indicated earlier, it would appear that the Bill and supporting documentation remain complex and difficult to understand and are not written for public comprehension. The documents appear to have been prepared to make it easier for statutory planners and related officers within State and Local Governments, to administer the Act and Regulation. [During the consultation process the responsible Executive Director was often heard saying that much of the Bill is not easily understood by anyone except statutory planners].
- Objective 4 is unlikely to be achieved until the Bill is clearer on the measurable outcomes being sought through planning scheme preparation and implementation, and less on operational detail. While the need for flexibility to provide for different circumstances has merit, this should not be at the expense of achieving the policy outcomes sought in legislation.
- Objective 5 might appear to be patronising Local Government. As State Government has the constitutional responsibility for the management of natural resources and land uses, shouldn't Local Government be supporting the State Government rather than the reverse?

Specific Issues and Suggested Way Forward

Planning Schemes

EIANZ recommends that the Parliamentary Committee consider the following changes for Planning Schemes:

- Include a requirement for the State Government to specify its "state interests" in measurable terms, and seek recognition and achievement of state interests through planning schemes (both Regional and Local Government), following negotiations to ensure consistency with the "local interests" of Local Government? This should be expressed as a policy in the Bill and supported by appropriate subordinate legislation. Contrary to the view presented by both major parties within Queensland, the existing single state planning policy provides little specific guidance on "state interests" and what the State Government actually expects of Local Government.
- Include a requirement for the factors (expressed as criteria) to be taken into consideration (rather than the process to be used) to guide decision-making in those circumstances where there are competing interests of **potential users** for an area, or for **the use of natural resource**. EIANZ recommends that a decision should maintain flexibility of "future choices" rather than to make a decision which precludes "future choices". (e.g., open cut mining, once undertaken, denies previous strategic cropping land from becoming equally productive for agriculture in a post-mining environment). EIANZ further recommends that this should be a principle recognised as a criterion, which requires a strong case in the "national interest" (based on an economic, social and ecological analysis), before a potentially irreversible decision is made. This was the policy basis for the previous State Planning Policy 1/92, and should continue to be a prerequisite if transparency is to occur (i.e., to justify a decision on a preferred use or for a departure from that use). Again, this should be expressed as a policy in the Bill and be supported by appropriate subordinate legislation.

- With the advanced nature of GIS and scientific knowledge about Queensland's landscapes and natural assets, traffic movements, emergency response requirements and so on, planning schemes can be developed based on evidence as well as political intention. While most local governments do not have resources for this sort of work, the capacity does exist and it should be in the State's interest to ensure this knowledge is used.

Development Assessment

In addition to permitting the running of the separate phases of IDAS concurrently, and providing flexibility on whether all phases are required (as proposed), EIANZ questions why it is necessary to continue with a process that implies there is a need for the lodging of a minimalistic application, an information request, and a referral, prior to a decision phase. We are of the opinion that all of this will incur additional cost and time delays for a development proponent, and lead to a lack of trust by those affected by a proposal. We also believe that this will place a significant burden on the assessment manager and referral agencies to maintain technical competency, if performance-based decision-making is to be followed.

EIANZ recommends that the Parliamentary Committee consider the following changes for Development Assessment:

- Include a requirement that if the state, local and neighbouring community interests are clearly defined for a development proponent, and the means of giving effect to these interests (in terms of outcomes to be achieved), then this information be included in a development application. This would expedite a justifiable development and increase community confidence in any subsequent approval. The issues that the development proponent would need to take into account would be documented in their application, as determined through pre-lodgement discussions with relevant State agencies, local governments and affected neighbours.
- To guide decision-making in those circumstances where there is the **potential for competing uses for a site or the natural resource** to be involved, EIANZ recommends that there be a requirement for the factors (expressed as criteria) to be taken into consideration, rather than the process to be used, and that justification be provided regarding whether a particular development should be located on the site in question, rather than on another site which might be a preferred location as indicated in a planning scheme. We believe that this should be a prerequisite if transparency is to occur in justifying a decision for a development, especially one that is difficult to address through a code where issues of cumulative impacts arise. Again, this should be expressed as a policy in the Bill and supported by appropriate subordinate legislation.

We acknowledge and thank you for the opportunity to contribute to the consultative process. Please contact me directly on 07 3222 3422 or at seq@eianz.org, if you have any questions regarding our submission.

Yours faithfully,



Dr. Mark Breitfuss
President EIANZ-SEQ