

23 October 2015

By email: bestplanning@dilgp.qld.gov.au

Department of Infrastructure, Local Government and Planning
Brisbane, Qld 4000



Environment
Institute of
Australia and
New Zealand
SOUTH EAST QLD DIVISION

Dear Sir/Madam:

RE: EIANZ SUBMISSION ON DRAFT PLANNING BILL 2015

The Environment Institute of Australia and New Zealand (EIANZ) South East Queensland (SEQ) Division welcomes the opportunity to submit its comments on the *Draft Planning Bill 2015* and acknowledges the efforts being made by the Queensland Department of Infrastructure, Local Government and Planning to reform planning and development assessment within Queensland.

The Institute is encouraged by the Queensland Government actions to engage the community in determining its future and in implementing ecologically sustainable development. The SEQ Division endorses outcomes which both utilise the natural resources of the State while at the same time protecting them from alienation and/or degradation. It further supports the achievement of this through having in place an effective and efficient planning and development assessment system. However, the Institute considers that there is still more that needs to be done to ensure that the needs of industry and the people of Queensland are met.

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.

Members of EIANZ may also attain accreditation as 'Certified Environmental Professionals' (CEnvP). The purpose of the accreditation scheme is to ensure that clients can access competent ethical advice from bona fide experts.

In addition to making a Submission on the areas requested by the Department of Infrastructure, Local Government and Planning, the EIANZ SEQ Division wishes to comment on 8 further policy areas that require attention if sustainable and best practice management of development projects are to be achieved.

1. EIANZ questions whether the proposed legislative reforms will actually enhance ecologically sustainable development from the development proponent and community's perspective. We are of the opinion that the amendments to the existing *Sustainable Planning Act 2009* should focus on the following policy outcomes, rather than focus on the process to be used by government to achieve these outcomes of:
 - Minimising conflict and enhance transparency through the use of defined criteria when choosing the most appropriate use of land where competing land uses are involved.
 - Maximising certainty in achieving a community vision for an area and maximising certainty for development proponents.
 - Minimising future conflict because of incompatibility of nearby development.
 - Addressing cumulative impacts of development.

2. EIANZ is of the opinion that regular reviews of legislation have merit. However, reliance on regulation to address policy issues and guidelines is of concern to EIANZ, unless the regulations are subjected to informed input. EIANZ believes that a whole of government outcome is best achieved if the drafting of the Bill has professional input from both environmental/NRM planners and statutory Planners, preferably those that are certified by their professions, as well as other informed members of the community.
3. EIANZ is of the opinion that while the *Sustainable Planning Act 2009* is undesirably long and warrants simplification, this requires more than simplifying or merging of documents (such as in the development of a single State Planning Policy), as such changes result in little benefit if the processes involved are not simplified. It is suggested that one criterion for judging any legislative reform might be "the total number of provisions to be taken into consideration in one or multiple documents". Also, if the intention is to simplify, why is there a need for a separate process to be used for "Government" developments? Likewise, why is there a need for three separate impact assessment processes in Queensland statutes? EIANZ suggests that Queensland should look to other jurisdictions, such as British Columbia, Canada. In BC, one piece of legislation, the *BC Environmental Assessment Act*, encompasses a single process that applies to all forms of development, whether they are government or private sector, across all industries. This would also assist in facilitating the environmental assessment bilateral agreement with the Commonwealth.
4. EIANZ is of the opinion that the Bill does not adequately address planning, when appropriate planning might otherwise eliminate unnecessary costs and minimize time delays being borne by development proponents and government often due to the lodgement of inappropriate development applications. The inclusion of a more rigorous strategic assessment at a planning stage would allow land use planning to apply to all lands for all uses including those relating to resource industries and possibly remove the need for some existing statutes.
5. To avoid confusion, EIANZ suggests that the development assessment process should continue to use the same terms as in the *Sustainable Planning Act*, unless the intent of a provision has significantly changed. EIANZ is disappointed that the Bill implies that all developments always generate negative impacts and, hence, the need for a name change from "impact assessment" to "merit assessment". These changes are more likely to be perceived as cosmetic and to confuse rather than to inform.
6. EIANZ is of the opinion that engagement with an informed community is critical, but only if it is followed by justification of departures from advice provided by them. While power sharing through community engagement has its risks, departure from it risks the loss of access to expertise and knowledge, which is often more extensive outside of government. Community engagement has the potential of leading to the better achievement of both short term and the longer term outcomes. Therefore, it is essential if statutes are to be effective, that those members of the community that are effected by them, including development proponents, need to be able to understand and be prepared to comply with provisions of statutes even if it's not immediately perceived to be in their best interests. To reduce conflict, it is EIANZ's view that appropriate engagement with affected parties should be a requirement **prior** to a planning change or to a development application being lodged.

7. EIANZ is of the opinion that it is important that practitioners, both within and outside of government, are competent in the various facets of planning, including plan preparation, assessment of development proposals, setting conditions, plan implementation and monitoring for compliance. It is suggested that this might be best achieved through the use of appropriately trained and certified personnel within the private sector and within government agencies - personnel certified by appropriate professional bodies.
8. EIANZ is of the opinion that if the Bill's purpose is to be met, agencies responsible for ensuring compliance with regulations must be sufficiently resourced to achieve an acceptable level of compliance, or regulations that cannot be adequately resourced should be removed. Currently, those that are "complying" with a regulation are financially disadvantaged over those who do not comply.

We acknowledge and thank you for the opportunity to contribute to the consultative process. Please contact me directly on 07 5429 8480 or at seq@eianz.org if you have any questions regarding our submission.

Yours Sincerely,

A handwritten signature in black ink that reads "Vicki Brady". The signature is written in a cursive, flowing style.

Vicki Brady
President, South East Queensland Division
Environment Institute of Australia and New Zealand

ATTACHMENT A:

ENVIRONMENT INSTITUTE OF AUSTRALIA AND NEW ZEALAND - SOUTH EAST QUEENSLAND DIVISION (EIANZ SEQ DIVISION) SUBMISSION ON THE REFORM OF THE PLANNING BILL 2015.

23 OCTOBER 2015

The following specific comments are made on the areas for which feedback has been sought on the draft *Planning Bill 2015*. The feedback is mainly in terms of whether the proposals are likely to advance the purpose of the proposed legislation.

In preparing this submission, the Institute has drawn on the expertise of its members who had extensive experience in natural resource planning and setting conditions of development applications.

Purpose of the Bill:

The purpose has merit. However, clause (g) in the yellow highlighted box would be enhanced by appending the words "*while maximising the beneficial environmental impacts of development*" to the end of the statement, so that the clause would now read "*(g) considering ways of minimising the adverse environmental effects of development (like climate change, urban congestion and declining human health), while maximising the beneficial environmental impacts of development.*"

Compensation arrangements for Local Governments in relation to natural hazards

Appropriately trained and certified personnel from professional and technical organisations should be able to provide advice on the risks to development from natural hazards. In the case of EIANZ, Certified Environmental Practitioners would provide advice on environmental risk, based on a set of rules developed under the Act.

A fundamental issue regarding use of persons appropriately qualified is how this determination will be made. EIANZ recommends that the professional associations that have developed certification schemes, such as EIANZ's CEnvP scheme, be the basis for deciding who is appropriately qualified and that this be reflected in the legislation.

EIANZ is concerned that reliance on “best available information” for making consistent and objective assessments of risk may result in less than adequate data being used for making a determination of risk. Rather, EIANZ would prefer to see any well-informed decisions based on good science that, if required, would be obtained through additional studies to augment best available information that is otherwise limited in its quality and/or scope.

Categories of assessment:

The legitimacy of a change is questioned, as it is not likely to enhance the purpose of the Bill, as changes are likely to enhance the certainty desired by most groups in the community. While the suggested changes may have relevance to members of the legal and statutory planning professions, the proposed changes are likely to confuse those seeking to utilise the legislation.

The term “Standard” suggests a baseline that is possibly unchangeable when code implies the criteria for decision-making which appears more appropriate.

The term “Impact” suggests positive and negative effects while “Merit” implies only positive. Any change appears to risk the government being seen as posturing and making cosmetic changes.

A more substantial change to the legislation that demonstrates community engagement to alleviate possible concerns and to possibly bring about more efficient and effective outcomes might be:

- A requirement, as occurs in other jurisdictions, for a development proponent to consult with those that might be affected by a development prior to lodging a development application, and to indicate what issues had been identified, and how the issues are to be addressed in the development application. This should apply, at least, to development that is deemed to be impact assessable.

EIANZ is concerned that where a standard / code assessment is carried out, the assessment manager may be empowered to approve only part, instead of the entire, application. We see the potential for a piecemeal approval of a development application that results in a less than desirable outcome. Our preference would be to issue conditional approval for the development if only certain parts of the project satisfy the code criteria, with final approval being subject to the application meeting all required code criteria after additional material is provided by the developer.

Deciding a development application:

While the move in the *Integrated Planning Act 1997* to performance based assessment had merit, it is questionable whether the expected benefits have been realised. It is suggested that this was because decision-making bodies and development proponents have not had the appropriate level of technical expertise for this to be effective. The loss of technical expertise within Government only further reduces the appropriateness of a performance based approach and increases the merit of greater community input.

It would be preferable if strategic issues relating to land use planning and “acceptable forms of development” were addressed in the plan-making stage, in which a development proponent would need to justify why their particular development, if inconsistent with the planning scheme, needs to occur on the land under consideration.

