Development Watch Inc

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30 July 2015

Department of Infrastructure, Local Government and Planning
By email only: bestplanning@dilgp.qld.gov.au

Dear Madam/Sir,

Re: Submission on the Directions Paper: Better Planning for Queensland

Development Watch Inc is a non-profit, non-partisan volunteer community group formed in 2004 for the primary purpose of preventing inappropriate development in and around the Coolum Beach area.

We thank you for the invitation to comment on the Directions Paper and the opportunity to have a say in the formulation of the new Planning Legislation.

It is of vital importance that Queensland's planning framework should provide the right balance between sustainable growth, the environment and the economy, whilst still protecting the lifestyle Queenslanders and visitors have come to value so much.

We therefore make the following submission:

LNP legislation:

We do not agree with the proposed LNP planning legislation as:-

1. No mention is made of ridding the Act of the 'injurious affection provisions'. These are the provisions that allow developers to claim compensation if a council makes zoning changes.

2. No mention is made of restoring the 'user pays' principle to the Planning & Environment Court.

3. We do not agree that 'prosperity' should be used as part of the purpose of the Act – it is an uncertain term which implies economic wealth in standard dictionary definitions, and for which we understand there will be no definition provided to impart an alternative, more holistic meaning.

4. Community rights are seriously eroded.

Community participation in decision making:

We note the Directions Paper does not contain a great deal of detail and we therefore ask that prior to the preparation of any Bill, we be provided with a clear outline of the proposals so we may give focussed feedback.

We support the Government's intention to:

- Ensure community involvement in decision making, both through rights to provide submissions which must be considered by decision makers and to appeal to the P&E Court, through clear terms, in legislation, without discretion (pages 7-8). Community rights to have their concerns heard in an independent Court are essential, and cannot be replaced with ADR which raises issues of power imbalances.

- Ensure the Act details notification and submission timeframes and requirements for developments to be publically notifiable in planning schemes (page 7). Public notification must be required to be undertaken after the information request stage and no major amendments to instruments or development applications must be allowed after public notification finishes, unless it is renotified.

- Restore the 'own costs' rules for planning appeals (page 8). The obstacles for community appellants are already significant, and risks of costs orders are a strong deterrent against community involvement in planning decision making.

Open, transparent and accountable planning framework:

- Any changes to the planning framework should align with the Fitzgerald Principles of accountability and good governance:

    1. Govern for the peace, welfare and good government of the State;
    2. Make all decisions and take all actions, including public appointments, in the public interest without regard to personal, party political or other immaterial considerations;
    3. Treat all people equally without permitting any person or corporation special access or influence; and
    4. Promptly and accurately inform the public of its reasons for all significant or potentially controversial decisions and actions.

- Fast tracking of development assessment processes must not be at the cost of meaningful community engagement and proper environmental assessment. This should be implemented through providing clear criteria and community submission, appeal and enforcement provisions through all

Queensland planning instruments, including in the SDPWO Act, as mentioned above, the Regional Planning Interests Act 2014 (Qld) and the Integrated Resort Development Act 1987 (Qld).

- Certain elements of the planning framework must be in SPA to ensure they are certain and enforceable, particularly access to information provisions. We do not support the general push to 'simplify' SPA by putting much of its content in subordinate legislation (page 9). For example, we do not support the access to information provisions being relegated to rules or regulations outside SPA (page 8), as detailed in the next point. Planning is by its nature complex and requires clearly defined 'process' to provide certainty; it is appropriate that our planning legislation is lengthy and provides for the processes, rights and obligations in the one Act rather than having to look at numerous other easily amended, non-enforceable instruments to understand key elements of the planning framework.

- Planning Studies and Supporting Documents need to be required. Public consultation must also be a requirement for early drafts of local planning schemes. For good planning and meaningful community involvement, background documents and studies must be required to be produced and made public in advance of draft planning schemes AND other planning instruments such as regional plans or State Planning Policies (SPPs).

- The Act must continue to provide for a public register that mandates public access to specific documents, as is currently the case in SPA. The Register must include monitoring data reported under development conditions. The legislation must require assessment managers to keep application and supporting documents available to the public both in hard copy at the counter and on their websites. The definition of supporting documents needs to be widened, for example, to include advice provided by advice agencies.

- Planning provisions provide certainty and should reflect Government's current policy. State Planning Regulatory Provisions (SPRP) should be retained so as to keep the ability to prohibit inappropriate development. Removal of these provisions would reduce certainty and performance under planning schemes. Further, the SPP must be reviewed with public input and amended to reflect the policy of the current Queensland Government on the Great Barrier Reef, on biodiversity, and particularly to include reference to reducing greenhouse gas emissions and adaptions pertaining to climate change. We support that the Directions Paper acknowledges that climate change is a necessary consideration in land use planning (page 7).

- Conditions of approval must be enforceable and assessment managers must be adequately resourced to ensure compliance and enforcement. Third parties must be provided with the right to assist with compliance and enforcement through rights to seek declarations, prosecutions and enforcement orders.

- We request that the power to 'exempt' development proposals from assessment through a discretionary decision not be included in our planning framework, as suggested in the Directions Paper (part 9). This creates a dangerous loophole, which at least must be open to be reviewed under the Judicial Review Act 1991 (Qld) with broad standing provisions.

Protecting our environment/sustainable development:

- Ecologically sustainable development - balancing the economic, social and environmental considerations - must be a key purpose in planning legislation, with the principles of ESD enshrined in the Act, as it is in the current Sustainable Planning Act 2009 (SPA). The State of the Environment Report 2011 even refers to SPA as a key initiative for the 'management of impacts from human settlements on the environment' through guiding ESD in the State.[1] In the Reef 2050 Long-Term Sustainability Plan, provided to the World Heritage Committee to demonstrate our plan to reduce impacts on our degrading reef, the Queensland Government commits to ensuring that decision making is underpinned by the principles of ESD.

- We support the Government's intention to ensure that there is a requirement to advance the Act's purpose, provided in the Act as well as any State and local planning instruments (page 6), although, as noted above, we do not agree with the purpose being "prosperity".

- State departments should have concurrence powers, as previously held, to allow special interest departments such as Department of Environment and Heritage Protection and Department of Natural Resources and Mines to provide a check and balance on assessment managers and to ensure more coherence in planning decisions.
  Case example: The recent Rainbow Shores v Gympie Regional Council & Ors decision of the Planning and Environment Court (P&E Court) demonstrated the importance of specialist departments maintaining concurrence power. In this case the P&E Court upheld the recommendation of refusal provided by the then Department of

Environment and Resource Management in their role as a concurrence agency to a development proposal near Rainbow Beach.

- Performance Indicators should be included in the planning framework at state, regional and local levels and reports be provided in a timely fashion.

- Conservation objectives, such as ecologically sustainable development need to be included in any proposed planning legislation.

- We support the Government's intention to better integrate planning instruments in Queensland (page 6).

  Currently protections found under one framework are not recognised, or overridden by another. For example, the State Development and Public Works Organisation Act 1971 (Qld) (SDPWO Act) overrides the SPA entirely, granting broad powers to the Coordinator-General, for instance to 'step in' and take over development assessment and approval processes, with very limited decision making criteria and no merits review of decisions under the SDPWO Act. This undermines much of the value of developing a solid, considered planning framework if it can be completely ignored.

Yours sincerely

Lynette Saxton,
President,
Development Watch Inc.