



EDO Qld.

Environmental Defenders Office

*Using the law to protect
our environment.*

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21 November 2013

Deputy-Premier, Minister for State Development, Infrastructure and Planning,
The Hon. Mr Jeff Seeney MP

By email: deputypremier@ministerial.qld.gov.au

Attention: Jeff Popp (jeff.popp@ministerial.qld.gov.au)
Hayley Rayment (hayley.rayment@ministerial.qld.gov.au)
Greg Chemello (Greg.Chemello@dsdip.qld.gov.au)

Dear Deputy-Premier,

Request for broader public consultation on Planning for Queensland's Development Bill and major planning reforms

A summary of the requests made in this letter is on page 5.

We refer to your brief conversation with Jo Bragg of our office on 28 October 2013 at Parliament, in which you advised that you would consider our request that you release a public discussion paper on your proposed reforms to the Queensland planning system.

We appreciate your preparedness to consider this request and outline below the general improvements that we propose as essential to good process for the proposed "Planning For Queensland's Development Bill".

1. Need for broader and more structured public consultation

EDO Qld is a non-profit community legal centre.¹ From our extensive experience advising community clients in planning law and policy, the usual practice in planning reform and major proposed legislative reform involves:

1. preparation of a discussion paper outlining proposed changes and the reasons, costs and benefits of those proposals;
2. publication of the discussion paper inviting community submissions and consultation;
3. analysis of the public's responses and amendments to address community concerns;
4. preparation of and publication of an exposure draft of the Bill for public comment;
5. revised drafting of the Bill and its formal introduction, debate and passage through Parliament.

The Borbidge, Beattie/Bligh and NSW's O'Farrell governments all respected and followed that well-established path in reforming the planning system. See **Annexure A**. The current

¹ EDO Qld advises and acts for individuals and community groups who seek to protect the environment in the public interest. Over the past 20 years, we have provided advice to hundreds of community members and groups on Queensland planning law, with many of those clients in rural and regional communities. EDO Qld has been publishing the Community Litigants' Handbook since 2006 to help the community understand planning law and what recourse they may have to enforce the law.

Queensland Cabinet Handbook provides, “consultation is an essential element of the Cabinet process”², and further provides that “The importance of effective consultation during the development of Cabinet submission cannot be over-emphasised.”³

We note that the Federal and Queensland Governments have committed to having a “one shop” in place by September 2014, with ‘in principle agreement’ on an approval bilateral agreement under the EPBC Act 1999 (Cwth) by April 2014.⁴ By not adequately consulting with the public on major planning reforms, it jeopardises the adequacy of the content of those laws and therefore of Queensland’s chances of those reformed laws being of a sufficiently high standard to be accredited by the Commonwealth’s approval bilateral agreement.⁵ A rushed process risks undermining community confidence in the system, as happened in New South Wales with Part 3A major projects fast tracking laws.⁶

2. Why the Planning Reform Forum is not enough: need for a committee to focus on public access to information, openness and transparency

EDO Qld is a member of the Planning Reform Forum chaired by Mr Greg Chemello. Since May 2013, EDO Qld has attended a number of Planning Forum Stakeholders’ meetings, the last of which considered proposals for the “Planning For Queensland’s Development Bill” (**PQD Bill**). We appreciate the courtesy of the public servants involved and EDO Qld’s inclusion on that Forum. However this Forum is not a substitute for a Discussion Paper or general public consultation on your proposed reforms as outlined above. As these meetings are currently conducted, they are a chance for the public servants to raise some ideas, present a few short papers and gain some type of feedback. The Chair, Mr Chemello decided not to keep standard minutes of the meeting despite our written and oral requests. This means there is only a patchy or non-existent record of views and opinions expressed at those meetings. As EDO Qld is the only non- government, non-industry community representative this means that our constructively expressed views and opinions are not on the record so as to be correctly conveyed to you.

At no time have Planning Forum members received a comprehensive outline of what the proposed reforms are so as to be in a position to make detailed comments on the whole package.

² Section 1.1, “Principles of Cabinet,” *Queensland Government Cabinet Handbook*.

³ *Ibid*.

⁴ <http://www.environment.gov.au/system/files/pages/71679b88-a037-420d-966f-1f5b7047ea83/files/onestopshop-mou-qld.pdf>

⁵ “Strict environmental standards” will need to form part of Queensland’s approval processes (including under Queensland’s planning laws) <http://www.pm.gov.au/media/2013-10-18/federal-and-queensland-governments-sign-one-stop-shop-environmental-approvals>

⁶ A hasty, non-consultative approach greatly affected confidence in the NSW Labor government in rushing through its ‘Part 3A’ major projects fast-tracking laws in 2005. This triggered a steady erosion of public confidence, new corruption risks, followed by the government’s removal and the repeal of Part 3A in 2011 by the incoming Liberal-National Coalition.

We are also gravely concerned that detail of unclear reforms on ‘planning’ and ‘development assessment’ and ‘alternative dispute resolution’ are being worked through in separate committees described as ‘technical committees’, with membership of those committees chosen by an unclear process. We acknowledge and appreciate that the public servant running the alternative dispute resolution committee has come to EDO Qld and sought our views. However our written request to have input into the planning and development assessment ‘technical committee’ to date has not been agreed to, which given the timeframes, is tantamount to a refusal. We also proposed at the Planning Forum that there should be a new committee to focus on **public access to information, transparency and accountability** which are issues of benefit to the community (especially if you seek to make the system faster) and which are part of open government as promoted by the Premier. That request was brushed aside as unnecessary, due to other initiatives, however we persist that such a committee is most important to ensure the issue is well addressed in the new legislation.⁷

3. Fair and Balanced legislation- need to keep ecological sustainability or ‘ESD’

In the absence of the detailed discussion paper it is impossible to see whether the reforms would lead to fair and balanced legislation. For example there is no evidence that actual data on the state of the natural environment has been specifically considered as part of the thinking process,⁸ so we are left with the impression only subjective impressions are relied on.

One issue that is of grave concern, is the proposal to change the current purpose of the *Sustainable Planning Act 2009* (Qld) legislation away from ‘ecologically sustainability’ – which details ecologically sustainable development⁹ – to a purpose that only ‘enables development’ in the proposed new **PDQ Bill**. Ecologically sustainable development or ESD is a conservative concept, well-accepted by State and Federal governments over many years. Balancing ecology, social matters and economics, and looking to short, medium and long term interests of our community, is fundamentally what good planning is about.

It is important to keep the purpose, duties and relevant definitions unchanged from the SPA in the new legislation, rather than narrowing the purpose to favour development. The current purpose of the *Sustainable Planning Act 2009* (Qld) was inserted in an earlier version of the Queensland planning legislation in 1997 under the Borbidge government and is little changed from that time.

⁷ Our office has also made a written request of the Deputy Director-General, Mr Greg Chemello, for a subcommittee under Planning Reform to address increased transparency, accountability and public access to information. Mr Chemello advised us that it was unnecessary given that ‘open government’ policies are embedded in Cabinet approval and government agencies engagement meetings.

⁸ For example, the *State of the Environment Report 2011* Qld would be highly relevant.
<http://www.ehp.qld.gov.au/state-of-the-environment/report-2011/>

⁹ The Queensland government is a party to the Intergovernmental Agreement on the Environment 1992, in which Queensland along with all other states, territories and the Commonwealth, committed to implementing the principles of ecologically sustainable development (ESD) in their own legislation and policies:
<http://www.environment.gov.au/node/13008>

Changing the purpose, duties and definitions or when they apply to plans or decision-making, would be contrary to fair and balanced planning legislation and maintaining high environmental standards the Commonwealth has indicated it requires.

4. More Detail of Openness on major planning reforms and consultation as essential part of Cabinet process

We welcome the Premier’s commitment to becoming more open about decision-making and government processes. We note the Premier’s comments that, “*We want to make sure the three fundamental elements - honesty, fairness and openness - become a key part of the process and outcomes for the state’s integrity system*” (Premier Newman, 13 August 2013¹⁰).

As you are aware, “consultation is an essential element of the Cabinet process.”¹¹ The Cabinet Handbook provides that “Consultation with persons or organisations external to government (including... community groups...) should be a routine part of policy development.”¹² It also states that consultation (including with stakeholders) should commence as soon as possible, prior to the preparation of the Cabinet submission, and carry through to Ministerial clearance of the final submission.¹³ “The importance of effective consultation during the development of Cabinet submission cannot be over-emphasised.”¹⁴

It has come to our attention from a PowerPoint given to us that the timeline for the Planning for Queensland’s Development Bill is as follows:

- March 2013: “Industry engagement” commenced;
- May 2013: Policy development commenced;
- Mid-June 2013: Drafting commenced;
- Late October 2013: Cabinet authority to prepare;
- December 2013: ‘Regulation and Guidelines’;
- March 2014: Cabinet authority to implement; and
- May 2014: Introduction of a Bill to Parliament in and a Parliamentary Committee.

Absent from the PQD Bill timeline is release of any discussion paper, conduct of public community consultation on the proposal or on an exposure draft legislation, or satisfactory consultation with stakeholders who represent community or conservation groups, despite the Cabinet Handbook provisions relating to consultation.

Additionally, the Cabinet Handbook states, “Ministers and Chief Executive Officers should adopt the use of Discussion and Policy Papers for the formulation of policy matters wherever necessary.”¹⁵ The scope of the proposed reforms and the implications the reforms will have

¹⁰ <http://statements.qld.gov.au/Statement/2013/8/13/queenslanders-asked-to-think-about-open-government>

¹¹ Section 1.1, “Principles of Cabinet,” *Queensland Government Cabinet Handbook*.

¹² Section 6.1, “Community Consultation,” *Queensland Government Cabinet Handbook*.

¹³ Section 6, “Consultation,” *Queensland Government Cabinet Handbook*.

¹⁴ *Ibid.*

¹⁵ Section 6.3, “Discussion (Green) Papers and Policy (White) Papers,” *Queensland Government Cabinet Handbook*

on community participation and enforcement of planning laws and warrants the use of a discussion paper. Community views on significant issues affecting all Queenslanders (for example, repealing the purpose or objectives of the existing SPA or alternative dispute resolution), should be obtained and considered prior to significant policy development.

While consultation with industry is important, there must be a balance with community and environmental perspectives, if Queensland is indeed “striving to create Australia's best planning and development assessment system”.¹⁶ Furthermore, the outcome of early public input into policy development adds legitimacy to policy reform.

We refer to **Annexure A** of this letter, which sets out some examples of the public consultation approaches taken to law reform by a previous conservative Queensland government, by the current Queensland State Government and by another state government, on relevant law reform. It shows that significant public consultation is a normal and reasonable process, as recently occurred in NSW and is underway in South Australia.

To give an idea of the thoroughness of the process in New South Wales, below is a relevant quote from the NSW Planning Minister when introducing his Bills on 22 October 2013:

Today is an important milestone in a process that started in July 2011 with the establishment of an independent panel led by the Hon. Tim Moore and the Hon. Ron Dyer, to review the State's planning system. In June 2012, following extensive community engagement, the independent panel produced a detailed report with 374 recommendations for consideration by the Government. The Government responded with the release of the green paper in July 2012, which set out the major proposed reforms and responded to the independent panel's report. Over 1,500 submissions were received concerning the green paper and more than 2,000 people contributed through community workshops, practitioner forums and online discussions. All of the detailed feedback received on the independent review and the green paper helped to inform the white paper and exposure bills which were released in April this year for further consultation. Almost 5,000 submissions were received on the white paper and exposure bills and each one was carefully reviewed and analysed. What is clear is that the review of the New South Wales planning system has involved unprecedented consultation. In excess of 6,000 responses were received, including many familiar voices and, in what is a good sign for the future, many new participants in the planning debate.

We note we have previously written to you on 12 June 2013 and 6 September 2012 regarding a number of important planning matters, including the draft Single State Planning Policy and amendments to the costs rules. There has been much planning reform undertaken recently, with very limited opportunities for direct discussion with the Department or your office.

5. Summary of requests

In furtherance of achieving a good quality planning system and the Premier's commitment to open decision-making processes, we request the following:

1. The Department of State Development, Infrastructure and Planning (DSDIP) release a draft discussion paper open for submissions from the public, which:
 - a. addresses the evidentiary basis for policy and legislative reform;
 - b. provides enough time for community responses;

¹⁶ <http://www.dsdip.qld.gov.au/about-planning/planning-reform.html>

- c. is not a final policy, rather it is an issues paper canvassing ideas;
2. A public summary of such public input and DSDIP's responses is prepared and with an opportunity to provide comment on draft exposure legislation;
3. Minutes of the Planning Forum meetings be kept and made available to Stakeholders attending the Planning meeting;
4. A committee of the Planning Forum, including community representatives, is formed to address increased transparency, accountability and public access to information; and
5. A brief meeting with you to discuss the matters raised in this correspondence.

We also request a meeting with your staff to discuss these issues and the further requests detailed at paragraph 5 of this letter.

Yours faithfully

A handwritten signature in black ink that reads "Jo-Anne Bragg." The signature is written in a cursive, slightly slanted style.

Jo-Anne Bragg

Principal Solicitor

Environmental Defenders Office (Qld) Inc

Annexure A

Examples of public consultation conducted by previous Coalition governments, other government departments in the Newman Government and other state coalition governments

Borbidge Government's consultative approach

Early public input into policy development is not a novel idea in policy and law reform. The *Integrated Planning Act 1997* (Qld) was introduced under the Borbidge Government. This process included prior releasing a discussion paper open for public comment at an early stage before the bill had been drafted. The Minister for Local Government and Planning at the time, Di McCauley of the National Party, personally chaired a stakeholders' group at which EDO Qld and other community and environmental organisations participated. Draft legislation was also released for public comment and feedback to the Department, well prior to the introduction of the bill to Parliament.

Recent consultation by DNRM

Another example of a stakeholder discussion paper is the Department of Natural Resources and Mines paper on small scale alluvial mining, released in July 2013. NRM sought stakeholder comments and received submissions from stakeholders. We have received indications from NRM that a more refined discussion paper will be released and open for public comment. The Premier indicated to us that in respect of the initial stakeholder discussion paper, that "No preferred option was put forward to implement changes... A preferred option will be developed on the basis of submissions received and refined through further consultation." Premier Newman then encouraged us to continue discussions with NRM about the ongoing policy development process.

Premier O'Farrell's planning reform consultation

As you are aware, the NSW Government recently undertook major planning reform. The NSW Government used a public consultation process in which it:

1. Established an independent panel to undertake a review of the state's planning system;
2. Held regional community forums around the state to obtain communities' views;
3. Released an Issues Paper for public submissions in response to the issues raised in the review and the community forums;
4. Held meetings with environment and community groups, in addition to industry groups;
5. Prepared a Green Paper in response to the submissions; and
6. Released a final White Paper and draft legislation.¹⁷

¹⁷ <http://www.planning.nsw.gov.au/en-au/policyandlegislation/planningforourfuture/howwelistedtoyou.aspx>