

Review of proposed planning framework 2015

1. COMMUNITY PARTICIPATION IN DECISION MAKING			
Issue of interest	CHANGES NEEDED / NOT ADEQUATE	GOOD	Comments
<ul style="list-style-type: none"> ● Public notification provisions for consultation on development applications are adequate and certain? 	<ul style="list-style-type: none"> ✗ Weaker provision for public notification methods - No requirement for advertisement in newspaper. ✗ Public notification periods are shorter for major developments requiring involvement of 3 or more referral agencies – now only 15 business days - under SPA these developments required 30 business days. ✗ The public notification provisions are now in Development Assessment Rules – making them easily changeable and reducing certainty. ✗ Non-compliance with public notification requirements is allowable – this removes certainty and gives too much 	<ul style="list-style-type: none"> ✓ Public notification remains 30 business days where the application involves a variation to the planning scheme. 	<p>Adequate, mandated public notification is the backbone of good community participation in planning decision making. Planning is complex – development applications typically consist of hundreds of pages of complex technical information. The community must have adequate time to either understand the material or, where resources allow, to engage an expert to assist them to understand it.</p> <p>Public involvement in decision making through submission and appeal rights has been accepted as being essential - for good planning outcomes, as well as reducing corruption.¹</p> <p>We are aware that many people monitor newspapers for development applications that may be of concern to them. Newspapers which are most popular and widely spread in the relevant area should be maintained as a source of advertisement for</p>

¹ ICAC, 'Anti-corruption safeguards and the NSW planning system', NSW, February 2012, p.22, available here: http://www.icac.nsw.gov.au/documents/doc_download/3867-anti-corruption-safeguards-and-the-nsw-planning-system-2012

	discretion to assessment managers to decide what adequate notification was in any circumstance.		applications.
<ul style="list-style-type: none"> • Third party appeal rights provided for in the Act? • Clear guidelines provided to local governments defining when development must be publically notified and open to appeal? 	<ul style="list-style-type: none"> × No guidelines have been provided to local governments to direct when development must be impact assessable and therefore publically notified. 	<ul style="list-style-type: none"> ✓ Rights to appeal are provided in the Act to properly made submitters (s245) 	<p>Appeal rights to the Planning and Environment Court are essential to provide the community with the opportunity to have their concerns with development fully investigated by an independent decision maker, to balance power between the community and developers, and to reduce corruption in our State.</p> <p>Guidelines would be highly beneficial to define when or in what region or context a local government must make a development 'impact/merit' assessable and therefore publically notifiable and open to appeal. Without this – one local government might make development 100m from a wetland always impact assessable, but the local government on the other side of the wetland may make it code assessable – creating inconsistencies and compromising the higher levels of protection provided by the first local government.</p>

<ul style="list-style-type: none"> • Each party pays own costs rule applies? 	<ul style="list-style-type: none"> × Costs orders may be made against third parties who take enforcement action under the Act – this is a significant disincentive for community groups to use enforcement provisions. This was <i>not</i> provided for in SPA prior to LNP changes and does not follow through on Labor’s pre-election Commitments.² 	<ul style="list-style-type: none"> ✓ Apart from the exception mentioned left, ‘each party pays own costs’ provisions are generally reinstated, as was previously provided for in SPA. 	<p>The rule that each party pay their own costs in the Planning and Environment Court has been a long standing feature of planning law in Qld. This rule ensures that community third party appeal rights are exercised and the benefit of this is reaped in good planning. Otherwise, often community groups would not bring appeals through fear of costs orders being received against the often under-resourced community group, even where their prospects were good.</p> <p>The previous LNP government removed this rule and opened up community groups to costs orders, through a mistaken understanding that this would reduce frivolous or vexatious litigants. The Court has powers already to dispose of frivolous or vexatious litigation, separate from the costs rules. This move by our previous government was unfounded.</p>

² ‘2014 State Policy Platform’, Queensland Labor, policy 7.177, p. 70, available here: https://www.queenslandlabor.org/wp-content/uploads/2014QldPolicyPlatform_web.pdf

<ul style="list-style-type: none"> • Consultation on State and local planning instruments mandated and prescribed in detail in Act? 	<ul style="list-style-type: none"> × Rules provided to mandate key expectations for consultation on local planning instruments – not in the Act so open to change easily. A toolkit is expected to be developed to also guide this process. 	<ul style="list-style-type: none"> ✓ Consultation required for State and local planning instruments, with some detail provided as to how consultation must be undertaken provided for in the Act (ss9&10 and Sch1) - 	<p>Nowhere is good public consultation required more than for planning instruments themselves. These instruments form the foundation of all development assessment decisions. It is essential that the instruments are developed with a high level of consultation from the community.</p> <p>Rules and ‘toolkits’ are not the same as Acts. The community needs strong provisions in legislation which mandate how public consultation should be undertaken. This is beneficial for all stakeholders, as it provides consistency and certainty as to how public consultation must be undertaken.</p>
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