"Working together – healthy landscapes, viable communities"

Sustainable Planning Bill

Submission

QMDC Submission on the Sustainable Planning and Other Legislation Amendment Bill 2012

12 October 2012

Submission to:
The Research Director
State Development, Infrastructure & Industry Committee
Parliament House
Corner George and Alice Streets
BRISBANE, QLD 4000
Email: sdiic@parliament.qld.gov.au

Submitting organisation:

Chief Executive Officer
Queensland Murray-Darling Committee Inc.
PO Box 6243
Toowoomba QLD 4350
Phone: 07 4637 6276
Fax: 07 4632 8062
Email: geoffp@qmdc.org.au

This submission is presented by the Chief Executive Officer, Geoff Penton, on behalf of the Queensland Murray-Darling Committee Inc. (QMDC). QMDC is a regional natural resource management (NRM) group that supports communities in the Queensland Murray-Darling Basin (QMDB) to sustainably manage their natural resources.

1.0 General comments

QMDC does not support a number of amendments to the *Sustainable Planning Act 2009* (the SPA) proposed by *the Sustainable Planning and Other Legislation Amendment Bill 2012* (the Bill). QMDC believes some of the proposed changes do not demonstrate a comprehensive understanding of the impacts these amendments will have on due legal process, the value of regional planning instruments and the rights of community to equitable access to legal remedies through the Queensland Planning and Environment Court (QPEC)

Lack of consultation and engagement with NRM bodies

QMDC is concerned by the lack of consultation and engagement with NRM bodies on this Bill. This is of major concern and results in a missed opportunity for legislators to develop planning law that advances regional planning mechanisms and instruments relevant to the SPA.

QMDC is actively committed to influencing legislation and policy through both community stakeholder engagement and government review processes. QMDC supports statutory planning processes and legislation that provide a high level of protection for the QMDB consistent with the aspirations of the Regional NRM Plan and other regional planning documents.

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QMDC asserts the State government should provide due recognition of the knowledge of NRM bodies and the communities they work with, the role NRM plans serve within the region when reviewing current planning legislation and sustainable planning processes.

QMDC is concerned that the removal of the statutory planning regulatory provisions and the decision to not have them in emerging regional plans will prove to be a major backward step in planning, for some of the following reasons:

- It removes planning protection to agricultural and environmental assets outside the urban footprint
- It may expose councils to ever increasing legal costs and court
- It may expose regions to council decision making which does not include forward thinking in relation to transport and access to jobs, education and health
- Scattered rural and urban development, that regional plans were brought in to fix, will become a major cost burden to councils and the state as services cannot be supplied efficiently or at all
- It will hand back powers to councils who will be able to approve developments in tidal and flood plain hazard zones
- Lifestyles and amenity will be lost with unmanaged or poorly managed development
- 25% of Australian agriculture occurs in the peri-urban zones because cities and towns are invariably on the best land, fertile flood plans and have ready access to water – given both the state and federal governments are targeting a doubling of food production this conflicts with current food security policies and priorities.

1.1 Recommendation

1. That the Bill should be re-examined and those clauses that will have a negative impact on due legal process, the integrity of regional planning instruments e.g. the Regional NRM Plan (the NRM Plan) and community legal capacity be rescinded.

2. That NRM bodies are consulted as key stakeholders and as an integral part of the "partnership approach" to "development assessment in key growth areas" and with regards to future selective consultation on this Bill.

2.0 Specific comments

2.1 Due legal process

Discretionary powers

QMDC does not support the provision of discretionary power to the chief executive or assessment manager when assessing particular applications. ***See clause 35; 255A, 255B & 255C.*** QMDC is concerned that where the Bill states that the chief executive or assessment manager "may have regard" and "give weight" as she or he is "satisfied" to "matters prescribed under a regulation" key issues may be disregarded, undermining regulatory safety nets. Opportunities for public and governmental scrutiny and advice will be lost creating a lack of transparency and confidence in the planning process.

QMDC asserts the legislation should avoid opportunities for decisions to be made behind closed doors when the preferred legislative requirement should make it mandatory that assessments must allow for wider governmental, public and community involvement.

Transfer of powers

QMDC is concerned that the transfer of authority to the chief executive as the single state assessment manager and referral agency may cloud the transparency of decisions and serve to sever the accountability of developers to regional and local government agencies and their associated legislation and policies.

The Bill by shifting more decision making and assessment powers to the State does not support the ability or capacity of current regionally suitably qualified persons to perform their existing planning and/or regulatory functions. Many of these persons not only have the relevant skills, but also have the ability to consider development applications in light of new policy, legislation and planning technologies and other useful information relevant to local and regional codes, policies, plans and on ground knowledge.

2.1.2 Recommendations:

1. That the powers of the chief executive or assessment manager to assess development applications are clearly defined and do not rely on discretionary powers or actions.

2. That the Bill does not devolve new decision making powers to the State Minister or chief executive.

3. That the State government should both acknowledge and build the capacity of local and regional government to assess solely or in collaboration with the State relevant State development applications.

2.2 Role of regional planning

QMDC asserts the Bill needs to acknowledge the current capacity of regional NRM bodies to implement the sustainable development aspirations of their local and regional communities. This in real terms requires state decisions especially on significant developments to pay due regard to the increasing knowledge and experience of regional NRM bodies and regional stakeholder groups in relation to the impact of development of the region's natural and social capital assets.

Regional NRM bodies, such as QMDC for example, coordinate NRM planning, monitor resource capability and condition, and facilitate on-ground works and operations. In this coordinating role, QMDC actively traverses disciplinary boundaries between science, policy, planning and operations in the themes of land, water, biodiversity and vegetation, energy and waste, cultural heritage, institutional assets and community capacity. QMDC negotiates geographical boundaries between property, catchment, regional and national scales; delivers its core business activities across multiple jurisdictional boundaries, and represents cross sectoral views of industry, farming and conservation.

Regional NRM bodies continue to work with State and Australian governments and other partners to better understand the impact of investment activities on the long term health/sustainability of the natural assets and regional communities. Adaptive management is an important underpinning principle of the regional planning process.

Producing useful regional maps to inform the SPA requires good alignment between regional boundaries and those agencies and organisations holding relevant data. Even if there is 'enough' data available for the planning process, challenges for planning may arise in relation to when and how to use expert and local knowledge in the planning process. The presence of scientific information or other evidence must readily demonstrate the cause and effect relationships required to design effective targets. It is also important to capture and appropriately using economic data at the regional scale for major industries e.g. CSG and coal mining.

Difficulties also arise when planning documents do not clearly articulate what constitutes 'the community' and "public benefit". A "significant community benefit" should be something that is deemed to be a local or regional benefit and not just one for the State.

Regional NRM Plans are therefore invaluable tools to protect the public interest against imperious private interest and entrepreneurial ambition that may be poorly informed or careless about the consequences of development on both natural resource assets and social capital.

Regional NRM bodies clearly have an integral role to ensure sustainable planning addresses the targets and aspirations of regional NRM plans but are also strongly placed to advocate for appropriate legislation and legal process.

2.2.1 Recommendations

1. That NRM bodies are resourced to ensure NRM planning is supported as an essential component of the Bill's assessment and decision-making processes.

2. That the Bill recognise the importance of building better links between statutory land use planning (regional or local government) and NRM plans.

2.3 Community legal capacity

QMDC agrees that legislation should be reviewed periodically to ensure legislation remains on par and supports the relevance and currency of planning practices. However QMDC asserts the starting point for reform to the SPA must be ensuring its objectives are not watered down to allow developments to proceed without thorough investigation and without community scrutiny.

Overall QMDC is concerned that legislative changes proposed are eroding against well-established principles of natural justice safeguarding equitable access to legal remedies and the Court system for community members and groups. Additionally the cost prohibitive nature of the proposed amendments is swimming against the tide of community expectations of government.

This Bill seems to want to remove some safeguards for community participation and environmental management for the sake of improved administrative efficiencies. In our view there are other mechanisms that could improve administrative efficiency whilst not opening the door to environmental asset degradation (e.g. establishing threshold limits for natural resources).

In recent years, community awareness, concern and willingness to be directly involved in environmental and community improvement projects has dramatically increased. Events such as the Brisbane floods, the Gulf of Mexico oil disaster, the aftermath of the Victorian fires, Queensland's CSG industry development, the increased membership of Surf Lifesavers' Association, are all examples where the community's capacity to be directly involved and well informed has increased.

The overall thinking behind this Bill needs further serious consideration to ensure the proposed machinery of government changes is not conflicting with good governance and community expectations.
QMDC strongly asserts that the 'own costs rule' be continued because it reflects the court's obligation to advance the purposes of the SPA, which include "*providing opportunities for community involvement in decision making*".

The Bill undermines the above objective by imposing significant costs on the community when community members or groups seek the opportunities provided in the legislation to participate in planning processes in accordance with the SPA – including decision making via merits appeals of planning decisions.

Planning and environment decisions which affect the whole community where a development is to occur are very different to private or personal actions, in which one party usually seeks damages from the other as compensation. Individuals and community groups gain no direct financial benefit for initiating proceedings in the QPEC, in fact costs are incurred by community groups when they act to ensure state or local planning laws and environmental laws are properly applied and enforced. Proceedings in the QPEC often seek to uphold, interpret or enforce provisions of local or state law that protect broader community or other public interests.

It is therefore essential that the wider community have the opportunity to be involved in decision making and, where appropriate, challenge decisions in court. Awarding costs following the case as per the proposed amendments would in QMDC's opinion discourage legitimate appeals due to the fear of extrapolated costs orders.

Current court rules prevent abuse by vexatious and frivolous litigants and commercial competitors. If in the rare instance that a party's appeal does lack reasonable merit or is brought to the court for surreptitious motives the current legislation gives the QPEC sufficient power to award costs.

2.3.1 Recommendations

1. That a code of conduct for community engagement and disclosure of information is developed addressing:

    a. Community expectations for a more enduring and direct role in the planning, decision-making on of development applications and how their impacts should be addressed.

    b. Timely and adequate notification of proposed developments, particularly where the developments have the potential to impact on the planning and resourcing of supporting infrastructure, services and land use e.g. Industrial and residential zoning, refuse management, sewerage management, roads, infrastructure, services (health, police, schools), airports, and emergency services.

    c. Engagement that is timely, meaningful and relevant and conducted appropriately for each stakeholder.

    d. Timely and public disclosure of the condition and trend of natural resource assets including site, total and cumulative impacts as they relate to the development applications and assessments.

2. That clause 61 not be approved because it will create a serious injustice for community organisations and the wider public throughout Queensland.