Making Effective Submissions on Planning Schemes

This Factsheet is for general information purposes and is not legal advice. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your particular circumstances you should contact the EDO or your solicitor.

This factsheet discusses how to make effective submissions on the preparation and amendment of planning schemes and planning scheme policies under the Sustainable Planning Act 2009 (Qld) (**SPA**). *This factsheet should be read in conjunction with our factsheet on 'Planning Schemes and Other Planning Instruments', which provides a full description of the planning process and the various planning instruments under the SPA.*

SUMMARY

Why should I make a submission on a planning scheme or planning scheme policy?
Planning schemes and the associated planning scheme policies are critical in determining the future use and development of communities, areas and regions, often for generations. Be aware that State planning instruments prevail over inconsistent local planning instruments[1] so it is important to make submissions on State planning instruments as well as on your local planning scheme.

If you have participated in planning processes, it may enhance your ability to have your say on individual development applications.

When should I consider making submissions on planning schemes or planning scheme policies?
You can - and should - seek to make your opinions on the future shape of your immediate or wider community known at any and every opportunity. However, SPA provides specific opportunities for making submissions on planning schemes and planning scheme policies. Under SPA, the public must be invited to make submissions on:

- the draft planning schemes;
- a major amendment to an existing planning scheme; or
- the making or amending (only major amendments) of a planning scheme policy.

Anyone (including a group incorporated or unincorporated) may make a submission. There are no limitations or requirements based on where you live.

[1] Section 53 *Sustainable Planning Act 2009 (Qld).*

A **properly made submission** must:[2]

- be in writing (unless electronic);
- be received during the submission period;
- state the name and address of every person making the submission;
- be signed by all persons making the submission;
- state the grounds of the submission and the facts and circumstances relied in support of those grounds; and
- must be received by the body proposing the planning scheme or policy by the due date.

Grounds for a submission can include impact on individual or community amenity, adverse traffic, noise, air and water quality impacts, land and soil quality, and energy usage. Submissions could also seek regulation of vegetation clearing on freehold land (in addition to State controls).

Individual submissions are much more effective politically than petitions or standard form letters. Planning is a political process. As well as lodging a submission, to gain extra force, send copies to your local councilors, ask them to represent your view to council and make your point in the media.

Local governments must advertise the preparation and availability of draft planning documents and must notify the time allowed for public consultation as follows:

- proposed planning scheme (minimum 30 business days)[3]; and
- proposed amendment to a planning scheme (minimum 30 business days)[4]; and
- proposed planning scheme policy or major amendment to a planning scheme policy (minimum 20 business days)[5].

Local government can allow more time than the statutory minimums for public consultation on planning schemes and planning scheme polices. Lobby your council for sufficient time frames. Be sure to lodge your submission on time. Financial and other assistance is sometimes available to community groups to study planning issues and formulate responses to planning proposals.

Seize the initiative and try to influence the way councils consult with you on planning schemes as this is highly worthwhile. Well informed and organised community and environmental groups can influence the process employed by council and have input into draft documents even before they are released for public consultation. Consider lobbying councillors and officials directly and putting issues before the media.

Note that in preparing or amending planning schemes, decision makers must "seek to achieve ecological sustainability" (see *Ecological Sustainability: The Purpose of SPA* Factsheet).

Local government must prepare a report to the Minister containing a summary of the submission received and explaining in general terms how it dealt with those submissions. It must then provide to each submitter, written notification about how the local government dealt with the submissions.[6]

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[2] Dictionary of *Sustainable Planning Act 2009 (Qld)*
[3] Part 2, Stage 3, Step 7.2 *Statutory Guideline 01/12: Making and amending local planning instruments.*
[4] Part 2, Stage 3, Step 7.2 *Statutory Guideline 01/12: Making and amending local planning instruments.*
[5] Part 3, Stage 2,Step 3.1 *Statutory Guideline 01/12: Making and amending local planning instruments*
[6] Part 2,Stage 3, Step 8.2 and Part 3, Stage 2. Step 4.2 *Statutory Guideline 01/12: Makingand amending local planning instruments*

MAKING EFFECTIVE SUBMISSIONS ON PLANNING SCHEMES

FULL TEXT

This Factsheet is for general information purposes and is not legal advice. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your particular circumstances you should contact the EDO or your solicitor.

Submissions - your opportunity to get involved in the planning process

The *Sustainable Planning Act 2009 (Qld)* (SPA) and the *Statutory Guideline 01/12: Making and amending local planning instruments* (statutory guideline) provides citizens with the right to comment upon and potentially shape the planning process and the future plans for their communities. It is extremely important that interested individuals and community groups appreciate the importance of planning schemes in regulating future development.

REMEMBER, when you are faced with undesirable development you may find yourself unable to object or find that it is too late to change anything. GET INVOLVED IN PLANNING.

The SPA provisions on public consultation should ideally be regarded as the statutory minimum obligations on applicants and decision makers under the Act. Nothing prevents councils from exceeding the requirements or the time allowed.

Seize the initiative

We suggest that you will be more successful if you seize the initiative and try to shape the way that council consults with you on its proposed planning scheme. Remember, the SPA sets out what councils must do in relation to public participation - no limit is set on what councils can do, and some enlightened councils already have established more innovative and more extensive pre-planning, planning and planning review mechanisms. You should try to encourage your council to follow best practice, not just what is legally required.

Some ideas are-

- find out the timetable for preparation of a planning scheme for your local government area (see Department of Local Government and Planning website http://www.dip.qld.gov.au/ or ask your local council);
- get in early and ask for the opportunity to comment on early draft documents, especially prohibited development, codes and strategic outcomes in planning schemes, before they are formally released for public submissions;
- ask (early) for a council planner to explain what the changes mean to your group;
- ask (early) for council to grant your group some funds so that you can employ a consultant planner or lawyer to help you respond in detail to draft documents;
- discuss the importance of the planning schemes with your group and assemble your volunteers and financial resources;
- ask (early) for your council to formally allow extra time for receipt of public submissions beyond the bare minimum timeframe set out in the *SPA*; and
- talk to key councillors, council public servants and the media to convince them of the merits of your submissions.

The submission process

In the minimum requirements for public consultation set out in the SPA members of the public may make submissions at specified periods in the planning process, the submissions must be considered by

decision makers and a written notification on how the submissions have been dealt with provided to the Minister. The local government must also provide each submitter with written advice about how the local government dealt with the submission.[7]

Who may make a submission?

Any person may make a submission. A group of persons whether incorporated or not incorporated is entitled to make a submission. A person from outside the local government area may also make a submission.

What is a properly made submission?

The only legal requirement is that the submission be a 'properly made submission'. A 'properly made submission' must: [8]

- be in writing (unless electronic);
- be received during the submission period;
- state the name and address of every person making the submission;
- be signed by all persons making the submission;
- state the grounds of the submission and the facts and circumstances relied in support of those grounds; and
- be sent to the local government or Minister, depending on who is proposing the planning scheme or amendment.

Petitions can be used but it is politically more effective for individuals to put in individual letters that show they have a considered view point.

When may a submission be made?

The public has three opportunities to make a submission:

- on a major amendment to a planning scheme;
- on the draft planning scheme; and
- proposed planning scheme policy or major amendment to a planning scheme.

Figure 4.1 highlights the process for preparing a planning scheme or planning scheme amendment, and shows when the public must or can be notified by council of the opportunity to lodge a submission (see also *Statutory Guideline*)

Figure 4.1 Public consultation during the planning scheme process

Stage 1 – Planning and Preparation Stage

- Local government proposes to prepare a planning scheme or planning scheme amendment
- Agreement on priority infrastructure plan (if applicable)
- Preparation of draft planning scheme (**optional public consultation**)
- Draft planning scheme or proposed amendment supplied to the Minister

[7] Part 2, Stage 3, Step 8.2 and Part 3, Stage 2. Step 4.2 *Statutory Guideline 01/12: Makingand amending local planning instruments*
[8] Dictionary of *Sustainable Planning Act 2009*

Stage 2 – First State Interest Review • Minister considers proposed planning scheme for adverse effects on State interests • Minister to notify local government of outcome of review
Stage 3 – Public Consultation • Local government publicly notifies the proposed planning scheme or amendment and commences public consultation • Local government reviews submission and decides how to proceed • The Minister decides what the next stage of the process will be (it may not require a second State interest review)
Stage 4 – Second State interest review (optional) • The Minister may decide this is not necessary • Minister considers whether State interests may be adversely affected
Stage 5 - Adoption Stage ▪ Resolution to adopt proposed planning scheme ▪ Public notice of adoption of, and access to, planning schemes ▪ Copy of notice and planning scheme to chief executive

How will I know when I can make a submission?

For **amendment to a planning scheme or a proposed new planning scheme,** the local government must publish at least once in a newspaper circulating generally in the local government area and on the local government website, a notice stating the following:[9]

- the name of the local government; and
- the title of the proposed planning scheme; and
- for a major amendment to a planning scheme:
  - the purpose and general effect of the proposed amendment; and
  - the location details of the area where the proposed amendment applies, if it only relates to part of the planning scheme area; and
- a contact telephone number for information about the proposed planning scheme or amendment; and
- where the proposed planning scheme or amendment is available for inspection and purchase; and
- that written submissions about any aspect of the proposed planning scheme or amendment may be made to the local government by any person; and
- the period during which the submissions may be made (at least **30 business days**); and
- the requirements for making a properly made submission.

[9] Part 2, Stage 3, Step 7.3 *Statutory Guideline 01/12: Making and amending local planning instruments*

For **an amendment to a planning scheme policy or new planning scheme policy,** the local government must publish at least once in a newspaper circulating generally in the local government area and on the local government website a notice stating the following:[10]

- the name of the local government; and
- the name of the proposed planning scheme policy or amendment; and
- the purpose and general effect of the proposed planning scheme policy or amendment; and
- if the proposed planning scheme policy replaces an existing planning scheme policy, the name of the existing policy; and
- a contact telephone number for information about the proposed planning scheme policy or amendment; and
- that the proposed planning scheme policy or amendment and any explanatory statement are available for inspection and purchase; and
- that written submissions about any aspect of the proposed planning scheme policy or amendment may be made to the local government by any person; and
- the period during which the submissions may be made (at least **20 business days)**; and
- the requirements for making a properly made submission.

The local government must display a copy of the notice in an obvious place in the local government's public office.

What information should I have before making a submission?

As a general rule, the more informed your submission is, the more seriously it will be taken and the more weight it will be given. Decision makers tend to disregard petitions (unless the numbers of those signing are very large or the signatories unusually influential). Standard form letters are similarly regarded. Individual submissions, particularly well informed and well supported submissions, are likely to have the greatest impact.

You COULD:

- read any background studies referred to in the planning scheme or that you can otherwise access that provide basic information about the state of the environment in your area, including the State of the Environment Report released by the Department of Environment and Resource Management (**DERM**); and
- attend any public meetings or contact the council planner to ask questions, including to point out matters not addressed.

On a draft planning scheme, you SHOULD

- read the key parts of the draft planning scheme with an emphasis on your areas of interest (e.g. possible residential development encouraged next to protected area); and
- engage a town planner to look over the draft scheme and provide feedback.

You COULD

- read key background documents on your areas of interest (e.g. any study into the flora and fauna or a study of public transport needs of residents of the area);
- seek the help of the council planner and ask how the plan would apply to hypothetical case examples of development applications affecting areas of interest to you (see the *Development Approval*s and/or *Making Submissions on Development Applications Factsheet* on the development approvals system under the SPA); and
- attend public meetings, ask questions and get involved in local community groups.

[10] Part 3, Stage 2, Step 3.2 *Statutory Guideline 01/12: Makingand amending local planning instruments*

Statement of proposals
Under SPA, the preparation of a Statement of Proposals is no longer required prior to the drafting of a new Planning Scheme. A Statement of Proposals was previously required under *Integrated Planning Act 1997(Qld)* and some councils have decided to proceed with this step regardless, in order to allow community input and hopefully gain feedback on the proposed policy direction before drafting of a new scheme commences.

Instead of mandating the need for a Statement of Proposals, local governments are now encouraged to undertake early public and stakeholder consultation when developing a new planning scheme or making an amendment. There are considerable benefits associated with early consultation including early identification of issues and community sentiment and values as well as early ownership of the final plan.

You should try to encourage your council to follow best practice and retain the use of a Statement of Proposal or at least mandate early consultation.

Draft planning scheme/amendment

The planning scheme sets out the local government's plan for the future development and preservation of its local government area.

Once public comment and the requisite state interest reviews have been completed, the local government must resolve to either stop the process of creating a new planning scheme/amendment or adopt the planning scheme/amendment.

The local government must consider all properly made submissions. The legal requirements for public consultation set out in SPA are only minimum requirements. After considering submissions, the local government must decide whether to proceed with the proposed planning scheme, modify it or withdraw it.

How do I find out that a local government has proposed a new planning scheme or amendment to a planning scheme?

The SPA requires that the public be made aware of the proposed planning scheme or amendment to a planning scheme. The local government must:

- publish a notice (requirements of notice above) at least once in a locally circulating paper;
- publish a notice on the local government’s website; and
- display the notice in an obvious place in the local government's public office.

The consultation period must last for at least **30 business days**. Remember, you can be involved in lobbying for matters to be included in the draft planning scheme/amendment and in lobbying for a longer period for submissions.

How do I get a copy of the draft planning scheme/amendment?

Besides advertising the draft planning scheme/amendment, the local government must also keep it available for viewing and purchase during the consultation period. This means that the local government:

- must keep the draft planning scheme/amendment in its office;
- make it available for viewing free of charge; and
- provide a copy or a part of the draft planning scheme/amendment if requested. A fee may be charged to cover the costs of making it available.

What must be in a planning scheme?

Planning schemes prepared under the SPA must):[11]

- appropriately reflect the standard planning scheme provisions;
- identify the strategic outcomes for the planning scheme area;
- include measures that facilitate achieving the strategic outcomes;
- coordinate and integrate the matters, including core matters (such as land use and development) dealt with by the planning scheme (including any State or regional dimensions of those matters);
- include a priority infrastructure plan; and
- include structure plans for any declared master planned areas.

Furthermore, a planning scheme must "seek to achieve ecological sustainability" (see *Ecological Sustainability: The Purpose of the Sustainable Planning Act Factsheet*). If these elements are not present in your draft planning scheme, you should ask your council how they will be addressed and why they are not included in the draft.

If you cannot understand the proposed planning scheme, you should seek the local government's assistance in clarifying and explaining it. You may also choose to engage a private town planner to assist you in providing feedback.

You should look in the proposed planning scheme for the following features:

- the treatment of areas of special significance, whether for ecological, social or cultural reasons;
- the triggers for assessable development, i.e. what developments require impact assessment (on which you can make submissions and later challenge in court) and which require code assessment (on which you cannot make formal submissions and have no appeal rights) (see *Development Approvals Factsheet*);
- what information is provided on the assessment process, e.g. is there any policy on public notice requirements for assessable development whether it be code or impact assessment;
- what information is provided about codes, e.g. how many are there and how detailed are they, do they require separate public consultation, what impact do they have on how developments are assessed;
- are the Strategic Outcomes (SO) comprehensive in their coverage? Are there specific SOs for dealing with the values of specific areas?;
- what measures are there for the achievement of SOs? Is there adequate planning for community and environmental infrastructure?

Preparing to write a submission on a draft planning scheme/amendment

There is no legal requirement for your local government to explain the draft planning scheme/amendment to you. The minimum requirements are that the local government notify the public and make the relevant documents available for viewing and purchase. However, it is open to the local government to undertake additional consultation.

You COULD:

- organise a meeting of other friends and acquaintances in the area affected by the draft planning scheme/amendment and invite a council officer to address your meeting and explain and clarify the proposal; and
- ask if the council has any videos or displays which might assist you to understand the proposal.

[11] Section 88 *Sustainable Planning Act 2009 (Qld)*

Before commencing your submission, you should look at other publicly available documents of the local government for background purposes. These include:

- current and previous planning schemes, planning studies and reports relating to those schemes;
- current State planning policies; and
- a Regional Plan if relevant, and any regional planning documentation including the terms of reference for the Regional Planning Advisory Committee and any reports it has made.

You could also request copies of:

- other submissions;
- reports about how those submissions are treated; and
- communications with other government agencies concerning the planning scheme.

Refer to *Accessing Information factsheets* for more detail about the documents available to the public.

Writing a submission on a draft planning scheme/amendment

When writing your submission, keep in mind that:

- it should be easy to read, i.e. use short sentences and plain English;
- it should be organised, i.e. use headings internally and ensure that it flows from one point to another;
- you should refer to the points of the statement of proposals you wish to address;
- you should highlight your key recommendations and summarise them at the end and beginning of the submission;
- for each point of the proposal you wish to discuss, you should set out the concern you have, the information and examples grounding that concern and any alternatives you wish to suggest; and
- try to keep your arguments focused on matters that the planning scheme can actually deal with. (i.e. land use, managing the effects and development of infrastructure standards etc.)

What issues must I address in my submission on a proposed planning scheme?

You should address the issues that are most relevant to you. Submissions should aim to focus on what 'outcomes' they wish to achieve and how planning and development can contribute towards these outcomes. Examples of issues which you may address are:

- impact on the amenity of the neighbourhood - e.g. does the statement of proposals have the capacity to detrimentally affect the character of your neighbourhood;
- the effects of traffic;
- noise, air, water pollution and other adverse impacts on the natural, built and human environment;
- air quality and energy usage;
- land and soil quality;
- waste management;
- ecology and nature conservation;
- social and cultural issues;
- economic development; and
- vegetation clearing on freehold land (in addition to State controls);

Consider whether the proposals advance ecological sustainability (see *Ecological Sustainability: The Purpose of SPA Factsheet*)

You may also wish to focus on more specific aspects on how development is to be treated and assessed.

How do I get feedback on my submission?

The local government must advise all submitters in writing how the local government has dealt with their submissions. This written information will be provided to each submitter that made a properly made submission. The aim is to provide submitters with feedback on the effect their contributions have had on the outcome of the scheme.

What happens next?

The local government may decide that significant modifications to the draft scheme are necessary. If the modifications make the proposed scheme significantly different to the first draft, the local government is required to repeat the public consultation process.[12]

If the revisions do not make the proposed scheme significantly different and the Minister is happy that it does not adversely affect the State interest,[13] the local government may resolve to adopt the scheme.[14] If it does so, then notification of the adoption must be made and the planning scheme must be kept available for inspection and purchase by the public.[15]

You can also begin to lobby for amendments to be made to any unsatisfactory planning scheme or to prepare for the next review of the planning scheme. You should, if possible, share your experiences and expertise with other interested parties, particularly within your local government area.

How can I make people listen to my views?

The first thing is to make sure that you can articulate your views in a simple and logical manner. What you say must be worth listening to.

You need to identify why the community and the government should be concerned about the issue and what makes it a priority.

You need to lobby people to adopt your views. To be a successful lobbyist, you must:

- know what you are talking about;
- know what you want to achieve;
- speak to the right person;
- use arguments that will be relevant to that person;
- suggest ways they can do what you want;
- suggest preferable alternatives;
- try to discuss the issue in a constructive way; and
- follow through.

You should consider whether there are groups with similar interests to your own which you can join or whether there are groups which have similar interests to your group.

You should also consider using the media to assist you. However, you should be careful. You should:

- know what message you are trying to convey and what it is you are trying to achieve;
- ensure that the issue is a simple one which can be easily communicated. If it is more complex, then you will need to provide some background;

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[12] Part 2, Stage 3, Step 8.3 *Statutory Guideline 01/12: Making and amending local planning instruments*
[13] Part 2, Stage 4 *Statutory Guideline 01/12: Making and amending local planning instruments*
[14] Part 2, Stage 5 *Statutory Guideline 01/12: Makingand amending local planning instruments*
[15] Section 724 *Sustainable Planning Act 2009 (Qld)*

- consider whether there is a potential 'photo' opportunity that might interest a television station or a newspaper;
- look into whether radio might pick it up as a talkback topic.

Further information and references

Environmental Defenders Office (Qld) Inc
Ph: (07) 3211 4466
Fax: (07) 3211 4655
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Environmental Defenders Office of Northern Queensland Inc
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On 3 April 2012, as part of Machinery-of-Government changes, the Department of Local Government and Planning was abolished, to be replaced by:

The Department of State Development, Infrastructure and Planning

- Ministers: The Honourable Jeff Seeney MP, Deputy Premier and Minister for State Development, Infrastructure and Planning; and Ian Walker MP, Assistant Minister for Planning Reform.
- Director General: David Edwards

Department of Local Government

- Minister: The Honourable David Crisafulli MP, Minister for Local Government.
- Director General: Neil Castles

Currently content from the former Department of Local Government and Planning will remain in place. The DLGP website states that agency specific websites are expected to be established shortly.

Your local government

Your local non-government environment council

Relevant laws

Statutory Guideline 01/12: Making and amending local planning instruments

Sustainable Planning Act 2009(Qld)

Sustainable Planning Regulation 2009 (Qld)