



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

SUBMISSION IN RELATION TO THE OPERATIONAL REVIEW OF THE *INTEGRATED PLANNING ACT 1997*

19 SEPTEMBER 2001

CHAPTER 1 - PRELIMINARY S.1.3.5- Definitions for terms used in "development"

Definition of 'material change of use'

- We do not oppose the use of the word 'increase' in regard to the intensity of use of premises.
- We do not support the removal of the term 'scale'. 'Scale or intensity' is a concept with which the Courts have had no difficulty. In a plain English sense, the terms are not interchangeable. They refer to different concepts. Although technical application of the terms may result in a similar result, we are of the opinion that use of both words greatly assists in clarity and therefore in understanding the meaning of the provision.
- We do not support the exclusion from the definition of development of any activity that is located on a premises for less than 28 days. This effectively means that there is little regulation on such activities which may actually be quite significant in their impact. The proposal to rely on local laws is inadequate as there will be uneven application across the State. This situation is not desirable to developers or to the public. A better approach would be to make such uses exempt development if they meet certain criteria.

Other matters

- We note that in the consultation draft the effect of this provision is to remove the definition of 'reconfiguration of a lot'. This definition should be reinserted.
- We support the idea that the definitions in the Act should be as self contained as possible so that it is not necessary to refer to other legislation to ascertain the meaning of a term. It is difficult enough for the community to understand the legislation without requiring access to multiple pieces of legislation.

CHAPTER 2 - PLANNING S.2.1.3 - Key elements of planning schemes

Retention of performance indicators

In our submission, the concept of performance indicators should be retained in the legislation. There has been no alternative proposed for measuring the success or otherwise of a planning scheme in seeking to achieve ecological sustainability. At the workshop, the problem seemed not to be with the concept but the detail of measurement. In our view, this is too important an issue not to be pursued. The community expects that there be a relatively simple and transparent way of ascertaining whether the planning scheme is achieving its intended results. In our view, it would be an admission of failure on the part of local government if the provisions relating to performance indicators were removed. It is also no argument to say that although they are not compulsory, local governments can still have performance indicators if they wish. Clearly, in this situation the vast majority of councils will choose not to have performance indicators in their plan.

S.2.1.7A - When superseded planning scheme may apply Access to applications

Under the previous system with acknowledgement notices, when a development application was made for an approval under a superseded planning scheme, the effect was that the application was searchable and the public could find out if an application had been made. Under this system, it would not be possible for the public to find out if such an application had been made. We suggest that a copy of these applications be kept in a register with all other development applications.

Shifting section to Chapter 3

The suggestion was made at the stakeholder meeting that this section be moved into Chapter 2. We are supportive of this suggestion as, although whether to apply a superseded planning scheme is a policy decision, the effect is a development application. Further, by classing these applications as a type of development application, the problem addressed in the above point would be remedied.

S.2.6.7 - Matters the Minister must consider before designating land for community infrastructure We are pleased to note the change in procedure which greatly improves the process in relation to designation of community infrastructure. However, we note the following points.

Requirement to take IDAS submissions into account - s.2.6.7(2)(b)

Under s.2.6.7(1), the Minister is required to be satisfied that adequate public consultation has been carried out and comply with subs.(4). Subsection (4) requires the Minister to consider all properly made submissions made under subs. (3) requirements. However, it does not require the Minister to consider

submissions made under subs.(2), the public consultation section. In our opinion, this is an anomaly which, if construed strictly, would make public consultation meaningless. It should be made clear that the Minister is required to take submissions obtained through the IDAS process into account in the decision making process. Subsection (4) should therefore be amended to include submissions properly made under subs.(2) or (3).

Consultation process should be contained in Act or Regulation rather than guidelines - s.2.6.7(2)(a)

In relation to the public consultation and impact assessment process outlined under subs.(2)(a), we are concerned that the process is contained in guidelines rather than in the Act or Regulations. As currently set out in the consultation draft, these guidelines will not be subordinate legislation. This is out of step with the other consultation processes listed in (b)-(e) which are all enshrined in legislation. The main problem is that guidelines can be easily changed which gives the potential to erode public rights where it is politically expedient to do so. We suggest that the process for public consultation and impact assessment under this draft guideline be contained in a schedule to the Act or Regulations.

Notification to neighbouring landowners

We suggest that in relation to subs.(3), all neighbouring land owners be notified in writing of any proposed designation. A designation may greatly impact upon the value of neighbouring properties or may affect the future uses to which a person can put their property. Therefore, any neighbouring landholder should receive notice and be entitled to make a submission. Notification on land We also suggest a provision which requires notices to be placed upon the land where practicable. While in some circumstances (e.g. a 200km pipeline) notices on the land may be impracticable, many of the types of community infrastructure listed in Schedule 5 of the Act are more contained. Such notification provisions would be consistent with notification for impact assessable developments under IDAS;

Clarify that provisions constitute statutory minimum for public consultation

The provisions should make it clear that each of the processes involves a statutory minimum for public consultation only and that further public consultation may be carried out at the discretion of the Minister. Other matters § The provisions regarding the public consultation required for forming a planning scheme or making amendments should make it clear that these requirements are a minimum only.

CHAPTER 3 - IDAS s.3.1.6 - Preliminary approvals may override a local planning instrument

Public notification of applications for preliminary approvals should not be reduced

At the stakeholder meeting, a significant unresolved discussion was held in relation to whether the notification period for a preliminary approval should be 15 days or 30 days. We strongly urge the retention of a 30 day notification period.

As the effect of a preliminary approval is to override a local planning scheme, effectively being an amendment to a planning scheme, it is essential that the community have sufficient time to consider the ramifications of such an application. This is particularly so as preliminary approvals are intended to be used for conceptual developments. In our view, it is of concern that there should be a proposal to reduce the formal public notification time by a period of some 3 weeks when most development proposals of this nature will have been years in the planning by proponents.

If the period for notification is to be reduced, we urge that a compromise be reached with a notification period of 20 days. This would allow the community more time to consider such important applications while lessening the suggested 'disincentive' for industry. This is not to suggest that we, in any way, would support any reduction in the notification period. Sufficient description We are also concerned that the application for preliminary approval may not be sufficiently detailed to enable the public to make an informed decision whether or not to make a submission. While full particulars are not expected, the description required should be sufficient to give a broad idea of the type of development which will take place.

s.3.2.8 - Public scrutiny of applications Definition of 'supporting material' in Schedule 10 is too narrow

In our opinion, the definition of 'supporting material' in Schedule 10 is too narrow. There is no reason why the material able to be accessed by the public should be limited to material given to the assessment manager. It should also cover relevant material brought into existence by the assessment manager such as informal information requests and responses (a practice employed by a number of councils). It should also cover responses to formal information requests by the assessment manager and referral and concurrence agencies.

This definition and s.3.2.8 generally are pivotal provisions for public interest purposes. Not only do they define the documentation able to be accessed by the public in making submissions on development applications; they also define the documentation which can be accessed prior to an appeal being lodged. It is therefore important that the provisions are wide enough to cover both situations. It is our experience that access to the internal recommendations and report prepared by councils' employees help the public in understanding why a local government has reached a particular decision. In our view, access to these documents would assist in minimising the number of submitter appeals which occur.

The current definition of 'supporting material' in Schedule 10 is unduly narrow by reason of the use of the word 'and' between paragraphs (a) and (b). This could be resolved by the use of the word 'or' instead. By using 'or' the public will be able to access important materials such as referral agency responses and internal council reports. These documents assist the public to make an informed

decision about whether or not to oppose the development. Particularly, these documents are highly relevant in determining whether or not to commence an appeal. These documents are all available to the public via a freedom of information application or under discovery in the course of an appeal. The issue with those avenues is one of timing. It is not, therefore, providing the public with information with which they would not otherwise be entitled. By including them in this process, the problem of the freedom of information time limits which exceed the time limit for lodging appeals is avoided.

If a broad provision is opposed, we suggest that more detail be provided in s.3.2.8 as to what material should be held on the public scrutiny file. Included should be any referral or concurrence agency responses, informal information requests and responses and council assessments.

Objection to withholding documentation from third party access - s.3.2.8(3)(b)

In our view, the provision allowing assessment managers to withhold documents not reasonably necessary to be inspected is objectionable and should be removed. Apart from the issue of sensitive security matter, we can think of no circumstances in which documents should be withheld, certainly with the rest of the section in its current narrow form. If the section was to be broadened generally, then there may be grounds for retaining this qualification. In any event, we suggest that it should be subject to strict criteria contained in subordinate legislation.

Because of the general exemption of the legislation from judicial review, the normal avenue of review of a decision to withhold documentation is not available. This is a broad discretion which has the potential to be abused if it is not carefully exercised. If documents are removed, there should be a requirement to provide a list with a brief description of the documents so that the public is aware firstly that documents have been removed and secondly of their nature.

Necessity of keeping records for public inspection up to date

More generally, some councils allow public access to the original development file, usually in its complete form. Other councils maintain a copy of relevant documents on their 'public scrutiny' file. We voice no particular opinion on the issue of whether the original documents should be able to be accessed or not, although it seems to us that the legislation does not sanction the practice of only providing copy documents for public inspection. However, in our view, it is of utmost importance that public scrutiny files be kept up to date. There are a number of anecdotal instances of files not being up to date when inspected for the purpose of submission making.

Database of development applications available for public inspection

We would also support the development by local government of a database of current development applications which would be on display for the public to be

able to monitor proposed developments. This could also occur in internet form. It would be helpful for these requirements to be articulated in statutory form.

Chapter 3 Part 4 - Notification Stage

Readvertisement must reflect changes to application

While the risk of having to readvertise is upon the developer should they choose to notify early, this will also be an imposition on the public. It must be made clear in any subsequent notifications that the development is being readvertised because there has been a change to the application and that additional information about the development is available for viewing. If this is not done, interested persons may think that they have already made a sufficient submission during the first notification which may be materially affected by the new information provided.

Notification should not commence until after the non-acceptance stage

The developer should not be allowed to commence notification until after the non-acceptance stage (10 days). This will result in less imposition on the public as it will ensure that there is a properly made application on file. Such a condition will not materially affect the time periods for the application.

Inadequate description of proposals on public notifications

In relation to advertised notices and notices on the land, there continues to be a problem of inadequate description of proposals. To comply with the legislation, it is sufficient to put a legalistic phrase describing the development. This often leads to confusion and misunderstanding within the community as to the type of development proposed. We suggest that a requirement be made for a plain English description to be included on all notices. This could be clarified through an amendment to the relevant form. We would also support the inclusion of a map in more complex proposals to aid in understanding the scale and intensity of the proposed development.

Time for public submissions should run until start of decision stage

We are sympathetic with the reason for this proposed provision which we imagine is to reduce the processing time for development applications. However, it is important to ensure that public awareness is not reduced. In our view, there is no reason why the notification stage should not continue from the time it is invoked by the proponent through to the beginning of the decision stage, rather than retaining an artificial time limit which will practically operate to limit the quality of public submissions.

Chapter 3 Part 6 - Ministerial call ins

Minister's report to Parliament should contain reasons for decision - s.3.6.9

Section 3.6.9(1) requires the Minister to prepare a report 'about the Minister's decision'. There is a requirement in s.3.6.9(2)(c)(iii) for the Minister to include a

copy of an analysis of submissions in the report. In our view, an extra sub section should be inserted providing that the report must contain an analysis of submissions and the reasons for the Minister's decision.

CHAPTER 4 - APPEALS, OFFENCES AND ENFORCEMENT

Section 4.1.22(2) - Court may make orders about declarations

This section should be discretionary. There are many circumstances where it would not be appropriate for the Court to make an order about any loss the owner of the premises may suffer. The proposed provision has the effect of forcing the Court to make an order that they make no order.

CHAPTER 5 PART 7A - ENVIRONMENTAL IMPACT STATEMENTS

Section 5.7A.1A - Purposes (of EIS)

Under S.5.7A.1A(b), the no development option should be a mandatory consideration.

Section 5.7A.2 - Draft terms of reference for EIS Compulsory notification

A considerable amount of discussion was held over the discretionary nature of the notification provisions. We reiterate that we would prefer to see compulsory notification of terms of reference. For matters of national environmental significance and notwithstanding the provisions of the Commonwealth legislation, it is essential that draft terms of reference be advertised to involve the community at the earliest possible stage. Similarly, if these provisions eventually apply to other types of development currently the subject of IPA, notification of terms of reference should also be mandatory. It simply does not follow that these provisions are likely to apply to routine types of development, as suggested. Any kind of development which would trigger an EIS is likely to be of such an impact that the community should be given the opportunity to be fully involved in the process. If our submission is not accepted on this point, we strongly urge that guidelines in the form of subordinate legislation are developed immediately as to when terms of reference should be notified.

Section 5.7A.4 - Public notification of draft EIS

Where the Part 7 EIS process replaces the information request and public notification period, there is some gain in the type of notification required (eg national newspapers). However, there is also some loss from the IDAS process. It is important that there be consistency with the IDAS notification process so that the public are fully aware of development occurring in their area. This includes matters such as notification on the land.

Guidelines for environmental impact assessment

Guidelines should be in subordinate legislation. Currently the required contents of an environmental impact assessment are proposed to be contained in a guideline. We urge that the required contents be contained in regulation. Such an

approach would be consistent with the approach of the Commonwealth legislation. Further, the Department of State Development has included the required contents in a regulation and the Environmental Protection Agency propose to do so as part of the bilateral agreement process. It is important that there be a consistent approach across departments to avoid confusion and inconsistency between processes.