Queensland Law Society

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Your Ref:

Our Ref: Planning and Environment Law Committee 18 May 2012

Mr Ian Walker MP
Assistant Minister for Planning Reform
12 Mt Gravatt-Capalaba Road,
UPPER MT GRAVATT QLD 4122

By Email: [redacted]

Dear Mr Walker

PLANNING LAW REFORM

As a former member of our Planning and Environmental Law Committee, I appreciate it is unnecessary to provide the usual introduction about the interest of our members in planning law reform and in assisting with any future consultation and review processes. You also know that the role of the Queensland Law Society in relation to planning law reform is not to represent any particular group of stakeholders, but essentially to uphold fundamental legislative principles, point out inconsistencies and poor drafting and seek to improve relevant administrative procedures. Over the years, the Queensland Law Society has lodged numerous submissions with the former government and relevant legislative committees in relation to aspects of Queensland's planning legislation.

Some of the key planning reform issues on which we have been providing submissions to the former Government and relevant legislative committees include:

- **State Government referral triggers and evidence of State resource entitlement/allocation** – The Queensland Law Society has repeatedly pointed out that there is considerable overlap or duplication between the referral triggers and State resource 'consent' for development applications. The lack of a procedural framework around obtaining State resource 'consents' means that this is also quite often an unnecessarily time-consuming and inconsistent process for applicants. Many of the triggers are absurdly complex. Some triggers would benefit from a regulatory '*de minimus*' threshold, for the sake of consistency. We are aware that a review of the referral triggers was commenced during 2011 under the former Government, but we do not have information about how far it progressed. **Annexure 1** is a copy of the Committee's most recent comments on this process.

- **Ministerial call-ins – Annexure 2** is a copy of the Society's most recent submission on this issue. Over the years, the Society has repeatedly expressed concerns about procedural fairness issues in connection with the Ministerial call-in process, the scope of the available discretion to interfere in local planning issues and various anomalies in the decision-making criteria.

- **State planning instruments –** There is obviously a role for State planning instruments in planning for State infrastructure, protecting State interests and similar issues. However, the Society has previously expressed concerns about the extent to which State planning instruments have gone further than this, particularly where State interests take away rights without compensation, in circumstances where a local government would have had to pay compensation for injurious affection if it had done the same thing. Also, State planning instruments need to be kept updated, an obvious example being the *State Planning Policy for Protection of Extractive Resources,* which is now seriously out of date.

- **Integrated development assessment system (IDAS) reform –** There are many ways in which the IDAS process could benefit from procedural reform. The Society has lodged numerous submissions on these issues, for example, in relation to the process for extending 'relevant periods' (formerly known as currency periods). It is noted that in a press release by the former Premier on 17 February 2012, she explained the need to provide planning exemptions in the *Sustainable Planning Regulation 2009* for expansions of hospitals and schools on existing sites on the basis that this was necessary to cut 'red tape'. Of course, existing hospitals and schools already had fewer planning restrictions than most other types of development in Queensland. If the 'red tape' burden was too great for hospitals and schools, there is surely room for improvement in the planning system for everyone else.

- **Standard planning scheme provisions –** The Society considered that there was inadequate consultation about the new standard planning scheme provisions imposed by the former State government and consequently that there are numerous drafting issues, as well as difficulties in using these standard provisions for more complex urban environments, where there is existing detailed and tailored planning, such as the City of Brisbane.

In a debate with the former Premier during the State election campaign period, the Premier mentioned an interest in spreading to other local governments a feature of the Brisbane City Plan, involving notifiable code-assessable development applications, which are not subject to third party appeal. The Society would be interested in providing input to that proposal, if it is pursued.

The Society would also be interested in providing input into any other regional land use planning policies that the new Government may be considering.

It is noted that various urban development areas (UDA) under the *Urban Land Development Authority Act* 2007 are proposed to be transitioned back to normal local government development control, but we understand that this has not been settled for some other UDAs. To the extent that some UDAs may remain in force, or might be transitioned more slowly than others, we would like to raise some concerns about gaps in procedures under the current legislation, which appear to have arisen as a result of this legislation having been enacted without, in our view, an adequate legal review or consultation period. For example, there are gaps in the ability to amend UDA development applications, without withdrawing and re-starting the process.

Finally, **Annexure 3** comprises copies of submissions to the former government relating to the Planning and Environment Court, in response to some inaccurate criticisms that appeared in a series of reports relating to the infrastructure charges reforms. Similar submissions were lodged by the Queensland Environmental Law Association and the Urban Development Institute of Australia. No doubt, there is room for improvement with any court, but the attached data demonstrates a remarkable level of success by Queensland's Planning and Environment Court in actively managing

its files and promptly resolving disputes, compared with other States. Our Planning and Environmental Law Committee does have some constructive suggestions for improvements, for example in relation to the Court's jurisdiction to award costs. If there are any future discussions about changes to the procedures or jurisdiction of this Court, we would hope that the new government would not leave the Queensland Law Society out of those discussions, as occurred under the former government. We will also be providing this information to the Attorney-General.

The Queensland Law Society looks forward to working with the new government in achieving effective planning reform. I have provided a similar letter to the Deputy Premier.

Yours faithfully

Dr John de Groot
President