

9 May 2023

Our ref: [WD:P&E]

The Hon Steven Miles MP
Deputy Premier, Minister for State Development,
Infrastructure, Local Government and Planning and
Minister Assisting the Premier on Olympic and
Paralympic Games Infrastructure
1 William Street
Brisbane QLD 4000

By email: [REDACTED]

Dear Deputy Premier

Consultation Paper - Supporting and improving the operation of Development Control Plans

Thank you for the opportunity to provide feedback on the "Supporting and improving the operation of Development Control Plans" consultation paper. The Queensland Law Society (QLS) appreciates being consulted on this important consultation paper.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Planning and Environment Law Committee, whose members have substantial expertise in this area.

Executive summary

1. The consultation paper outlines four proposals at a very high level. QLS has commented briefly on each below.
2. Generally, the proposed reforms are welcomed. The proposals will broadly address the challenges the development industry and local governments have faced following *JH Northlakes Pty Ltd v Moreton Bay Regional Council* [2022] QPEC 18, which has resulted in development applications needing to be prepared under repealed legislation.

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3. QLS supports the proposed approach of validating existing approvals and applications in progress and process modernisation generally.
4. Any process modernisation must, however, be done in a way which does not adversely affect existing rights or impose new requirements.
5. In the absence of the drafting proposed to achieve these outcomes, it is difficult for QLS to provide more assistance at this time.
6. QLS would be pleased to review the drafting, when it is available. There are likely to be complexities in drafting the relevant transitional provisions and it will be important to identify any unintended consequences of the drafting, particularly with respect to preserving existing rights.

Proposal 1 – Include provision in Planning Act to validate prior approvals given since 2009 in Development Control Plan (DCP) areas

QLS supports the proposal to validate existing approvals, which is essential. This amendment should be fairly straightforward.

QLS also supports the proposal to prepare transitional provisions to support application processes underway. This amendment is likely to be less straightforward and QLS recommends that the drafting of the transitional provisions be the subject of further consultation.

As noted above, QLS would be pleased to provide feedback when the draft amendments are available for review.

Proposal 2 - Remove legislative linkages relating to DCPs between repealed planning legislation and the Planning Act

Broadly, QLS supports this proposal.

At a high level, there are advantages to allowing applicants to use the processes under the *Planning Act 2016* (Qld) (**Planning Act**).

This proposal does, however, raise several issues that require resolution. For example:

1. Is there a need for a referral mechanism? (See discussion below in relation to Proposal 3);
2. Are applications capable of being deemed to be approved?
3. The consequences for infrastructure charges. In particular, if this proposal was implemented, whether or not infrastructure charges and conditions under the *Planning Act* apply?
4. Whether or not a variation application can be made, and can a variation approval be granted?

QLS recommends further consultation about these matters with industry stakeholders, to ensure that all perspectives are considered before implementing the proposal.

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Proposal 3 - Include a mechanism for the referral of DCP plan applications to the state for assessment

QLS is concerned that the inclusion of a referral process based on the Planning Act and *Planning Regulation 2017* (Qld) at the plan application stage or the development application stage for these DCPs is likely to be problematic for all participants in the process.

These DCPs are mature planning documents supporting master planned communities. The DCPs were made in consultation with the State Government at the time, and we expect that as the DCPs were developed, they took into account relevant State interests.

These documents are also supported by infrastructure agreements that provide a level of certainty to participants about the State requirements.

To impose further State requirements at this point in time (being many years after these documents were made) may create uncertainty and lead to the imposition of onerous requirements.

Proposal 4 – correct cross reference between two chapters and parts within Planning Act

The correction of an incorrect cross reference is supported.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED]

Yours faithfully

[REDACTED]
Chloé Kopilović
President