Planning and development dilemmas in a minority government: Restoring community or held to ransom?

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In January 2015, the Queensland Labor Party ousted the Newman government from power in a spectacular yet ultimately uncertain election result. The ALP won 44 seats, one short of forming a majority government but went on to form a minority government with the support of the independent member, Peter Wellington. In the electoral campaign the ALP had promised to form a "listening government" that would restore honesty, accountability and transparency to government. This article questions whether this "collaborative governance" policy agenda can realistically be met by a government whose hold on power is so weak. In order to answer this question, the article first summarises the legacy of the Newman government with respect to planning and environmental matters. It then reviews the policy and law-making style of the new government in three areas: major urban development projects; the 2015 planning Bills and proposed reform of land clearing laws. It examines the range of pressures, political and otherwise, that confront a well-intentioned and reformist government. It concludes that, while there has been some progress, the Palaszczuk government is "battling the odds" to reap reform and not just because of its numbers in Parliament. While a consultative approach is particularly valuable for a minority government, it is not in itself a sufficient solution to the dilemmas of planning and environmental governance.

INTRODUCTION

In March 2012, the Liberal-National Party (LNP), under the leadership of Campbell Newman, walked into government in Queensland with a massive electoral victory. The LNP won 78 seats – the largest majority government in Queensland history – while Labor was reduced to seven parliamentary members. However, the roller-coaster ride was just beginning. In January 2015, in an equally spectacular election result, the LNP lost control of government after only one brief term in office. On this occasion, the Labor Party won 44 seats – a swing of 35 seats in their favour – but just one seat short of forming a majority government. In the days following the election, the Labor Party leader, Annastacia Palaszczuk, garnered the support of the only independent member, Peter Wellington and thereafter Labor formed the next government of Queensland on 14 February 2015.[1]

Clearly, the electorate was very unhappy with the achievements of the Newman government. Among their concerns were: the number of redundancies in State government; politicised judicial appointments; asset sales; corruption scandals; and controversial "bikie" laws.[2] Across the board, the government's heavy-handed and unaccountable mode of operation had aroused the ire of the whole community.

In the run-up to the election, the Labor Party made various promises to undo and repair some of the least popular aspects of the previous government's short regime. At a general level, the basic message of the Labor Party's policy platform was that it would "listen to the people of Queensland":

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[1] Queensland State election, 2015, <https://en.wikipedia.org/wiki/Queensland_state_election,_2015>.

[2] For a concise summary of some of the controversial issues see, A McKean, "Ten Vital Things to Remember About the Newman Government on 31 January", *Independent Australia*, 6 January 2015, <https://independentaustralia.net/politics/politics-display/ten-reasons-to-remember-the-newman-government--unkindly,7235>.

> We believe community engagement enriches our lives. We believe in government that genuinely consults with and works to strengthen our engagement in local communities.[3]

This, "listening government" theme was carried through into policy directions for planning and development control:

> We believe in a planning system that is … open and accountable, to ensure communities and neighbourhoods can fully participate in the planning and development decisions that affect their local areas.[4]

The aim of this article is to examine whether this "collaborative governance"[5] policy agenda can realistically be met by a government whose hold on power is so weak. Can deliberative and participatory decision-making be implemented in practice by a minority government? In order to answer this question, this article first summarises the legacy of the Newman government with respect to planning and environmental matters. It then reviews the policy and law-making style of the new government in three areas: major urban development projects; the 2015 planning Bills; and, finally, proposed reform of land clearing laws. It examines the range of pressures, political and otherwise, that confront a well-intentioned and reformist government. It concludes that, while there has been some progress, the Palaszczuk government is "battling the odds" to reap reform and not just because of its numbers in Parliament. While a consultative approach is particularly valuable for a minority government, it is not in itself a sufficient solution to the dilemmas of planning and environmental governance.

THE NEWMAN LEGACY

The Newman government swept to power in 2012 with a pro-development message centred on the traditional "pillars" of the Queensland economy – tourism, agriculture, resources and construction.[6] Top of the agenda was the need to cut back on wasteful bureaucracy so as to speed up project delivery.[7] By eliminating duplication and cutting red tape, it would become cheaper, easier and more profitable to do business in Queensland. Environmental and planning regulation was quickly identified as a hindrance on development so the new government almost immediately started changing the law. The *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Qld) separated environmental and development licensing so that environmental approvals could be delivered "on a risk basis" – ie, more quickly and with more standardisation across facilities.[8] Furthermore, the *Sustainable Planning and Other Legislation Amendment (No 2) Act 2012* (Qld) transferred the referral powers of almost all State departments responsible for advising on particular aspects of development applications to the newly formed State Assessment and Referral Agency (SARA). The aim was to speed up development approvals for big projects;[9] the method employed gave SARA huge control and complete discretion over major project approvals.

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[3] Queensland Labor, *Queensland Labor State Policy Platform 2014* (2014) 3, [1.6].

[4] Queensland Labor, n 3, 60, [7.155].

[5] The literature on communicative planning and collaborative governance derives largely from the work of Habermas in J Habermas, *The Theory of Communicative Action, Vol 1: Reason and the Rationalisation of Society* (Beacon Press, Boston, 1984). From the planning literature, significant discussions of communicative planning include: P Healey, *Collaborative Planning: Shaping Places in Fragmented Societies* (MacMillan, London, 1997); J Innes, "Planning Theory's Emerging Paradigm: Communicative Action and Interactive Practice" (1995) 14(3) *Journal of Planning Education and Research* 183; J Forester, *Planning in the Face of Power* (University of California, Berkeley, 1989); J Forester, *The Deliberative Practitioner: Encouraging Participatory Planning Processes* (MIT Press, Cambridge, 1999). For an introduction to collaborative environmental governance (or new environmental governance), see C Holley, *The New Environmental Governance* (Earthscan, 2011); A Fung and EO Wright (eds), *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance* (Verso, 2003); T Buss et al, *Modernizing Democracy: Innovations in Citizen Participation* (Sharpe, 2006).

[6] C Newman, "LNP leader Campbell Newman Presents Five Steps to a Can Do Queensland", *The Courier Mail*, 24 November 2011, <http://www.couriermail.com.au/news/queensland/lnp-leader-campbell-newman-presents-five-steps-to-a-can-do-queensland/story-fn9l8d0r-1226205375115>.

[7] Liberal-National Party (LNP), *The LNP Can Do Property and Construction Strategy* (Brisbane, 2012) 7.

[8] *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012* (Qld), Explanatory Notes, 2.

[9] *Sustainable Planning and Other Legislation Amendment Bill 2012* (Qld), Explanatory Notes, 2-3.

The down-sizing (and discretion enhancing) green tape reduction agenda continued apace. The *Economic Development Act 2012* (Qld) replaced the *Urban Land Development Authority Act 2007* (Qld) and the *Regional Planning Interests Act 2014* (Qld) paved the way for down-sizing statutory regional plans. Both statutes reduced the statutory hurdles for developers by reducing public rights to query and contest particular planning activities.[10] Of more notoriety, the Newman government made changes to the *Vegetation Management Act 1999* (Qld) to allow the licensing of broadscale clearing for "high value agriculture" and removed altogether the existing (hard won) protection for high value regrowth vegetation on freehold land.[11] It also changed the costs rules for applicants contesting development approvals in the Planning and Environment Court (PEC)[12] and cut back on the public's right to object to mining applications in the Land Court.[13] It placed the world heritage status of the Great Barrier Reef at risk by encouraging new coal mines in the Galilee Basin and associated port infrastructure at Abbot Point.[14] Meanwhile, in south-east Queensland, the Newman government approved changes to the urban growth boundary to allow new housing developments on the urban fringe.[15]

Late in 2014, to complete its radical overhaul of planning and environmental legislation, the Newman government introduced a new Planning and Development Bill into Parliament.[16] In reality this, "once in a generation"[17] reform of planning law was fairly unsurprising. For the most part, it consolidated previous reforms (such as SARA and the costs rules), eliminated some obsolete provisions and transferred a huge amount of procedural detail into supporting regulations (which were never published) and/or best practice guidelines. Environmental groups were alarmed that public rights to access information and make submissions would be governed solely by regulations and guidelines instead of being "enshrined in law" and they battled hard to ensure at least a token mention of ecologically sustainable development was reinserted into the objects section of the Act.[18] No matter, the fate of the 2014 Planning and Development Bill was determined by the 2015 election: the Bill lapsed once the election was called.

All in all, it would be fair to say the Newman government did nothing to court the support of the environmental lobby and a great deal to alienate it. In the run-up to the 2015 election, it was easy enough for the Labor Party to woo the green vote with a number of promises relating to governance of the Great Barrier Reef, vegetation clearing and reassessing a number of controversial urban development projects. Judging by the 2015 election results, it was a strategy that worked. But that was just the beginning. Once in power (and only just) the task of restoring, repairing and rebuilding planning and environmental governance would become at least as challenging as winning the election.

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[10] See further, P England, "Regulatory Obesity, the Newman Diet and Outcomes for Planning Law in Queensland" (2015) 32 EPLJ 60.

[11] *Vegetation Management Framework Amendment Act 2013* (Qld) ss 46-47.

[12] *Sustainable Planning and Other Legislation Amendment (No 2) Act 2012* (Qld) s 61.

[13] *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld), Ch 9; *State Development and Public Works Organisation Act 1971* (Qld) s 47D. See further, C McGrath, "Mining Coup in Queensland Removes Public Objection Rights", *The Conversation*, 22 September 2014, <https://theconversation.com/mining-coup-in-queensland-removes-public-objection-rights-31737>.

[14] J Robertson, "Newman Government Keen on Adani Coalmine Despite Treasury Advice", *The Guardian*, 1 July 2015, <http://www.theguardian.com/australia-news/2015/jul/01/newman-government-keen-on-adani-coalmine-despite-treasury-advice>.

[15] See further, P Fritjers and C Murray, "Four Ways We Can Clean Up Corruption in Land Rezoning", *The Conversation*, 4 June 2015, <https://theconversation.com/four-ways-we-can-clean-up-corruption-in-land-rezoning-42557>.

[16] *Planning and Development Bill 2014* (Qld), introduced 25 November 2014.

[17] Department of State Development Infrastructure and Planning (DSDIP), "Planning Reform Queensland", <http://www.dsdip.qld.gov.au/about-planning/planning-reform.html>.

[18] *Planning and Development Bill 2014* (Qld) cl 3(1). In an earlier draft the equivalent sub-section stated: "The purpose of this Act is to facilitate Queensland's prosperity by balancing economic growth, environmental protection and community wellbeing". See *Planning and Development Bill 2014*: Consultation Draft, release 1 August 2014.

REVIEWING URBAN DEVELOPMENT PROJECTS

An obvious place for the new government to start its journey as a "listening government" was in the implementation of its election promises to revisit some particularly controversial development projects and proposals. Two examples will suffice to demonstrate how this task was approached.

The Cedar Woods master planned community

In June 2014, Huntsman Property Group Pty Ltd had made an application to develop a master planned community involving up to 1,350 new dwellings and associated facilities over 200 hectares on Mount Nebo Road at Upper Kedron.[19] This area, on the outskirts of Brisbane, is characterised by large lots and broad hectare holdings bordering the Brisbane Forest Park. After some downsizing, Brisbane City Council (BCC) approved the application on 9 December 2014, approximately eight weeks before the State election.

The potential for broad hectare land to be developed for urban purposes on a much more compact basis than has occurred in the past is a controversial aspect of the South East Queensland Regional Plan and was always going to inflame conflict.[20] Not surprisingly, Council's decision to approve the Cedar Woods application did not go down well at all with the local community. Upper Kedron is situated in and adjacent to the middle-class electoral wards of Ferny Grove and Ashgrove and, in this particular instance, the community had some powerful cards to play. At the time the approval was given (December 2014), Ashgrove was represented in State Parliament by the top man himself - Premier Campbell Newman. In the 2015 State election his opponent was Kate Jones, who had been the Labor member for Ashgrove and the Minister for the Environment in the Labor government that preceded him. As part of her election campaign, Jones promised a review of BCC's decision if elected into government:[21] she was. In a dubious honour, Campbell Newman became only the second Queensland premier to lose his own seat in a State election. He has since retired from politics. Meanwhile, Ms Jones went on to become the new Minister for Education.

The BCC's decision on the Cedar Woods application was made on 9 December 2014. Section 424A of the *Sustainable Planning Act 2009* (Qld), allows the Minister up to 50 business days after a decision notice is given to the applicant to give notice of an intention to call in a development decision. An application that is "called in" by the Minister will be redecided by her in a final decision that is not subject to appeal.[22] On 2 March 2015 - at the very last minute allowed by the statutory time frame – the new Minister for Planning, Jackie Trad, gave notice of her intention to call in and redecide the Cedar Woods development application:

> We made a commitment to listen to the community, and this proposed call-in notice will provide an opportunity for all stakeholders to have their say.[23]

Following that initial notification, the Cedar Woods application was duly called in on 24 April 2015.[24] Three months later, after reading almost 1,600 submissions and taking advice from independent planning experts, the Minister approved the application but only in part.[25] The approved development was now limited to 480 dwellings (the BCC had previously approved 980 dwellings) located on land already designated as an Emerging Community Area in the Ferny Grove/Upper Kedron Local Plan. In her decision notice, the Minister identified: conflicts with the strategic plan

[19] Call-in notice, at <http://www.dilgp.qld.gov.au/resources/report/development-applications/call-in-notice-cedar-woods-upper-kedron.pdf>.

[20] Queensland Government, *SEQ Regional Plan, 2009-2013* (2009), 15.

[21] The development was also opposed by Mark Furner, the Labor candidate for Ferny Grove.

[22] *Sustainable Planning Act 2009* (Qld) s 427(5).

[23] T Moore, "Government May Step in Over Upper Kedron Mega Suburb", *Brisbane Times*, 3 March 2015, <http://www.brisbanetimes.com.au/queensland/govt-may-step-in-over-upper-kedron-mega-suburb-20150302-13t4ml.html>.

[24] Call-in notice, at <http://www.dilgp.qld.gov.au/resources/report/development-applications/call-in-notice-cedar-woods-upper-kedron.pdf>.

[25] 31 July 2015.

(which associated the land with greenspace values and parkland); the current zoning of the land (including Rural Area and Environmental Protection Area); and conflicts with the Ferny Grove/Upper Kedron Local Plan as reasons for her decision.[26] In a statement to the media, the Minister was damning in her criticism of the BCC:

> Independent expert planning advice found that Brisbane City Council failed to properly assess this development application against their own planning scheme, and that only a partial approval could be justified when assessed against council's plan … the Brisbane City Council planning framework for the site has been fundamentally deficient and does not provide an appropriate basis on which to make long term development decisions for this area. As a result of council's failure, I also intend to issue a formal Ministerial Direction under the *Sustainable Planning Act 2009* requiring council to undertake updated planning in the local area. Good planning and real engagement with the community is required to resolve these major deficiencies.[27]

Given the political significance of the Ashgrove electoral ward, the Minister's decision on Cedar Woods is not altogether surprising. However, it is interesting to note the lengths to which the Minister was prepared to go in order to arrive at this result. The Minister's call-in power was exercised very late in the day over a development proposal with high economic stakes. In early 2015, Queensland was experiencing a significant economic downturn. The applicant had argued that this development would stimulate $900 million dollars in investment, create more than 550 permanent jobs, up to 1,000 other jobs, and generate "significant multiplier effects through to other parts of the economy".[28] For a newly incumbent government, struggling to assert a majority vote in Parliament, it risked inciting not only the influential BCC and the developer,[29] but the whole development community. As the Shadow Minister for Infrastructure, Tim Nicholls observed:

> The decision by the Labor Government to call-in an already approved development to reassess it for political reasons will send a shiver down the spine of people involved in the building and construction industry… There needs to be an understanding by government that jobs and opportunities are created by … providing a certain process.[30]

The Wave Break integrated resort

Cruise holidays are a rapidly growing part of the tourism industry so it is no surprise that a major holiday destination like the Gold Coast is keen to cater for them.[31] Options for a cruise ship terminal were first explored in 2005 but were shelved without progress.[32] In 2012, the Gold Coast City Council (GCCC) and the Queensland Government signed a memorandum of understanding inviting private tenders to develop proposals for integrated resort facilities, including a cruise ship terminal, on the Gold Coast. One such proposal was for an integrated resort facility on Wave Break Island. In "the

[26] Deputy Premier, Minister for Transport, Infrastructure, Local Government and Planning, Trade, Decision Notice, 31 July 2015, <http://www.dilgp.qld.gov.au/resources/report/development-applications/cedar-woods/cedar-woods-decision-notice.pdf>.

[27] Department of Infrastructure, Local Government and Planning (DILGP), "Queensland Government Directs Further Planning for Cedar Woods" (Media Release, 3 July 2015), <http://statements.qld.gov.au/Statement/2015/7/31/queensland-government-directs-further-planning-for-cedar-woods>.

[28] Call in Notice for a Development Application under the *Sustainable Planning Act 2009*, <http://dilgp.qld.gov.au/resources/report/development-applications/call-in-notice-cedar-woods-upper-kedron.pdf>.

[29] K Silva, "Cedar Woods: Lord Mayor Unsure if Upper Kedron 'Mega Suburb' Will Proceed", *The Sydney Morning Herald*, 2 August 2015 <http://www.smh.com.au/queensland/cedar-woods-lord-mayor-unsure-if-upper-kedron-mega-suburb-will-proceed-20150801-gipko9.html>.

[30] J Hinchcliffe, "Proposed New Suburb Near The Gap, Upper Kedron Called In, 'Sends Mixed Signals To Developers'", ABC News, 28 April 2015 <http://www.abc.net.au/news/2015-04-28/queenslands-building-development-woes-sends-mixed-signals/6427102>.

[31] According to Tourism Australia, the cruise sector experienced an estimated 20.6% increase in expenditure in 2012-2013 compared to 2011-2012 with further growth estimated at 17% anticipated for 2013-2014. See, "The Cruise Industry", <http://www.tourism.australia.com/the-cruise-industry.aspx>. World-wide, Cruise Market Watch estimates the cruise industry has an annual passenger compound annual growth rate of 6.55% from 1990-2019. See, <http://www.cruisemarketwatch.com/growth/>.

[32] City of Gold Coast/Queensland Government, Broadwater Marine Project, project background, <http://www.broadwatermarineproject.com.au/the-project.html>.

largest piece of integrated tourism infrastructure in Queensland's history", the ASF Consortium[33] proposed a "world-class project" involving a cruise ship terminal as well as a casino, marina, super yacht facilities, hotels, retail outlets, residential accommodation etc.[34] Once again, impressive economic advantages were anticipated for the benefit of the local community:

> The development is set to attract more visitors for longer stays, as well as generate significant capital injections into the local economy, contribute long-term employment benefits and deliver local infrastructure upgrades that will allow the city to grow into an international tourism destination.[35]

Wave Break Island was created in 1985 as part of the Gold Coast Seaway construction. This government-owned, man-made island protects the western foreshore of the Broadwater estuary and stabilises the seaway entry. The Broadwater estuary defines the Spit, a narrow peninsular that is home to Main Beach, Sea World and various other tourist facilities. Wave Break Island itself is surrounded by important stocks of sea grass and dugong feeding areas. The whole area is relatively undeveloped by Gold Coast standards. In these circumstances, a development project on the scale now being proposed was bound to generate controversy.

The public campaign to defeat the Wave Break Island proposal was coordinated by the Save Our Spit Alliance (SOSA). In its view:

> Aside from the massive dredging required for ship terminals … which will seriously adversely impact upon the local marine environment – the project offers Gold Coasters restricted access to their waterways and public open space playgrounds, noise and visual pollution, on-land and on-water traffic congestion and a visual eyesore to boot … Who ruins a magnificent public open waterway – with a frightful design like this? Gold Coasters love and enjoy the Broadwater and will not let this happen.[36]

Despite such vigorous local opposition, in February 2014 the Deputy Premier announced that the ASF Consortium's Detailed Proposal demonstrated that a cruise ship terminal on Wave Break Island was feasible, subject to further environmental and technical studies.[37] In a gesture to local opposition, the Deputy Premier also required the developer to undertake an extensive community consultation process to provide evidence of the degree of public support for the proposal. In March 2015, the ASF duly produced evidence showing that, in a public opinion survey, 65% of the community supported the proposal;[38] but SOSA claimed the Consortium's public consultation was "a manipulative PR-devised farce".[39]

On 3 February 2015, just before the State election, the Labor Party leader, Annastacia Palaszczuk, visited Wave Break Island and met with various members of the community. In an unambiguous statement to the community, she announced:

> Today I give you this commitment. I have listened to the people. I have listened to what you have been saying to me, and there will be no development here, pure and simple … Vote Labor, and we will reclaim the Broadwater for the people.[40]

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[33] The ASF Consortium comprises the ASF Group, China Communications Construction Company (CCCC), Guangzhou Dredging Co Ltd (GDC) and China State Construction Engineering Corporation Limited (CSCEC).

[34] City of Gold Coast and Queensland Government, Broadwater Marine Project, <http://www.broadwatermarineproject.com.au/the-project.html>.

[35] ASF Consortium overview, <http://www.goldcoastevolution.com.au/about/project-overview/>..

[36] "Sembawang-Brooks Wavebreak Island Development 'Frightful'", <http://www.saveourspit.com/No_Terminal/wavebreak-island/Wavebreak-Island-Plan.htm>.

[37] "ASF Consortium Proposal", <http://www.broadwatermarineproject.com.au/asf-consortium.html>.

[38] "Community Consultation Update Stage 2: 3 October 2014-2015 March 2015", <http://www.goldcoastevolution.com.au/wp-content/uploads/2015/03/022-FINAL-ONE-PAGE-OVERVIEW-STAGE-2- CONSULTATION-300315.pdf>.

[39] See n 36.

[40] "Queensland Election a Boon for Gold Coast Environment", <http://www.swellnet.com/news/surfpolitik/2015/02/03/queensland-election-boon-gold-coast-environment>.

At about the same time, Bob Katter's Australia Party and Peter Wellington, the independent member for Nicklin, also voiced opposition to the project.[41]

After forming government in January 2015, the Labor Party held true to its election promise. On Tuesday 28 April 2015, State Development Minister, Dr Anthony Lynham, suspended the Wave Break Island proposal. He defended his decision on social and environmental grounds.[42] Four months later, on 4 August 2015, the Minister announced a new agreement between the State government and ASF Consortium to develop a five hectare site on the Spit as an integrated resort including a casino and other facilities but without a cruise ship terminal. Adopting the language of the development lobby, Dr Lynham proudly proclaimed:

> Construction of a new resort development and casino will generate thousands of new jobs during construction and thousands more long term jobs and training opportunities once facilities are operating … This news can only add to the rising level of activity and excitement on the Gold Coast as it ramps up for the 2018 Commonwealth Games and the influx of visitors and global exposure it will bring.[43]

A detailed master plan from ASF is now anticipated in early 2016.

It seems that there was an element of developer "appeasement" in the negotiations leading up to the August announcement. After all, both Cairns and Brisbane have proposals for major new integrated resorts (including casinos) progressing well, so the Gold Coast would not want to be left out.[44] Interestingly, while welcoming the decision to abandon the Wave Break Island resort proposal, SOSA's President expressed concern at the new project announcement – the community had not been consulted; the proposal was not made subject to a competitive tendering process, and the existing height limit of three storeys for development on the Spit was unlikely to be observed.[45] Were some cracks beginning to appear in the listening mantra of the Palaszczuk government?

PLANNING LAW REFORM

In the aftermath of the 2015 election the Palaszczuk government stayed true to its election promises to the community on some particularly controversial development projects. It did so despite courting the wrath of the development and construction industries and despite clear signs of a weakening economy and stagnating job market. For a minority government, struggling to secure adequate support in Parliament, it risked criticism within and beyond Parliament for dragging the economy downhill.[46] This bold stand of the new government was laudable but, on further reflection, it was not entirely surprising. Contrasting itself with popular perceptions of the Newman government, the Labor Party, during the 2015 election campaign, claimed its government would be based on integrity and accountability. The credibility of these claims would have been seriously undermined if the new government had back-pedalled on the above high-profile, development controversies. It could not afford to risk the wrath of the community that had delivered it to government.

But what about all the less conspicuous decisions to be made after the drama and excitement of the 2015 election had died down? Inheriting government after three dramatic years of downsizing,

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[41] See n 40.

[42] T Moore, "Labor Ends Gold Coast Cruise Ship Terminal Concept at the Broadwater", *Brisbane Times*, 28 April 2015, <http://www.brisbanetimes.com.au/queensland/labor-ends-gold-coast-cruise-ship-terminal-concept-at-the-broadwater-20150428-1mvedn.html>.

[43] "Chips are in for Integrated Resort, Casino at Gold Coast" (Media Statement, 4 August 2015), <http://statements.qld.gov.au/Statement/2015/8/4/chips-are-in-for-integrated-resort-casino-at-gold-coast>.

[44] Department of State Development, "Major Projects – Integrated Resorts", <http://www.statedevelopment.qld.gov.au/major-projects/queens-wharf-brisbane.html>.

[45] "Gold Coast Casino to be Built next to Sea World", *Sydney Morning Herald*, 4 August 2015, <http://www.smh.com.au/business/gold-coast-casino-to-be-built-next-to-sea-world-20150804-giqx4c.html>. "Gold Coast Casino and Resort Project at Main Beach gets Planning Nod from Queensland Government", ABC News, 4 August 2015, <http://www.abc.net.au/news/2015-08-04/gold-coast-casino-and-resort-project-gets-planning-nod/6670290>.

[46] J Hinchcliffe, "Proposed New Suburb Near The Gap, Upper Kedron Called In, 'Sends Mixed Signals To Developers'", *ABC News*, 28 April 2015, <http://www.abc.net.au/news/2015-04-28/queenslands-building-development-woes-sends-mixed-signals/6427102>.

how could this government restore integrity and accountability to planning and environmental governance? This section compares the Coalition's 2014 Planning and Development Bill and the current government's 2015 Planning Bill, first published in September 2015.

The 2014 Planning and Development Bill

The *Planning and Development Bill 2014* (Qld), it will be recalled, was the culmination of the Coalition's "once in a generation" review of planning legislation in Queensland. Had it been enacted, it would have repealed and replaced the *Sustainable Planning Act* in its entirety. The main objectives of the 2014 Bill were to streamline and simplify the existing regime ensuring time and cost efficiencies, especially for developers:

> The Bill aims to significantly improve the integrity, speed, navigability and legibility of the system, and reduce the complexity of the Act and the system it establishes. This is expected to deliver an improved, more responsive set of processes for plan making and development assessment in the State; and ensure a reduction in transaction and delay costs for system users.[47]

By 2014, some of the Coalition's most significant reforms had already been introduced - for instance, changing the principle for costs orders and establishing the State Assessment and Referral Agency (SARA). SARA, in particular, is a good example of the lengths the Newman government was prepared to go to in order to create "process efficiencies". SARA was established to develop a one stop shop for State-based assessment replacing the need for multiple referrals to separate State departments. Unlike the law regulating referral agencies, the statutory framework establishing SARA gave the new entity complete freedom to decide whether or not to apply the codes and policies of the former referral agencies or the new State Development Assessment Provisions.[48] The rationale for such wide discretion was to ensure that SARA was able to reconcile possibly conflicting statutory requirements and goals; the effect was to ensure SARA's discretion was almost unfettered (except by the risk of an applicant's appeal).

As well as entrenching the *Sustainable Planning and Other Legislation Amendment (No 2) Act 2012* (Qld) reforms, new reforms in the 2014 *Planning and Development Bill* included:

- *Removing substantive statutory objectives from the Act*: The Bill as initially drafted removed all reference to ecologically sustainable development.[49] It was argued that planning policy was best included in policy and planning instruments rather than the legislation itself.[50] However, a cursory reference to ecological sustainability was reinserted in the Bill in response to lobbying from environmental interests.[51]
- *Streamlining the range of plan-making instruments*: The Bill reduced the types of State planning instruments by abandoning State regulatory planning provisions and the standard planning scheme provisions. It was anticipated some of the existing regulatory material would be transferred into the planning regulation.[52]
- *Transferring procedural requirements into the planning regulation or statutory guidelines*: By removing almost all the process requirements of the integrated development assessment system (IDAS) from the main legislation the drafters accomplished a huge downsizing of the legislation accompanied with, needless to say, a jump in the number and size of subsidiary instruments.[53]

[47] *Planning and Development Bill 2014* (Qld), Explanatory Notes, 2.

[48] *Sustainable Planning Act 2009* (Qld), ss 255C, 255E.

[49] *Planning and Development Bill 2014* (Qld), Consultation Draft.

[50] Planning Reform Queensland, *Draft Planning Bills* (25 November 2014) 8.

[51] *Planning and Development Bill 2014* (Qld) cl 3(1), <http://www.legislation.qld.gov.au/Bill_Pages/Bill_54_14.htm>.

[52] Planning Reform Queensland, n 50, 9-10.

[53] Planning Reform Queensland, *Proposed Development Assessment Queensland System* (24 November 2014).

- *Creating a separate Planning and Environment Court Bill*: The Bill also excised statutory provisions about the Planning and Environment Court (PEC) and, in this case, transferred them to the separate *Planning and Environment Court Bill 2014* (Qld).[54]

As with any new legislation, the devil is in the detail. Tied up in these "procedural" reforms were some adverse consequences for accountability and transparency. For example:

1. The existing South East Queensland Regional Plan, State Planning Regulatory Provision defines the boundaries of the Urban Footprint for South East Queensland. The Urban Footprint is Brisbane's "green belt" measure designed to protect its parameters from continuous urban sprawl. In the *Sustainable Planning Act*, any proposal to replace or amend the Urban Footprint requires parliamentary ratification.[55] That level of protection and scrutiny would be removed if provisions about the Urban Footprint were transferred to a schedule in the Planning Regulation.
2. In a similar vein, the public's rights to be notified of impact assessable development applications; to have access to relevant documentation and their timeframes for making submissions would all become vulnerable to Ministerial amendment once they were transferred out of the main legislation and into the Development Rules applied by regulation.[56]
3. The Bill proposed that, unlike the existing situation, not all impact assessable development would require public notification. Instead, individual local governments would be able to determine which impact (renamed merit) assessable development would require notification.[57] This has an important bearing on public appeal rights because only people who have made a submission on a publicly notified application may proceed to lodge an appeal.
4. In the proposed development assessment system (to be implemented via the Development Rules), the maximum period for public notification would be reduced to a blanket 15 business days. Thereafter, the assessment manager would have 10 business days to consider and deal with all public submissions.[58] As a result, public submissions might be considered in isolation from the overall assessment and decision-making process (for which the proposed timeframe was 30 business days).
5. The Bill allowed the Minister to override a local government and appoint an alternative assessment manager for any particular type of development application.[59] Use of this power would not require justification.
6. In the *Sustainable Planning Act*, approvals not acted on lapse after four years. In the 2014 Bill, that period was extended to six years with extensions possible.[60]
7. The proposed development assessment system included generous provisions allowing applicants to negotiate privately with SARA or the assessment manager before and during the assessment process.[61]
8. The extensive discretion vested in SARA was not addressed or curtailed by the Bill.[62]
9. In merit review proceedings before the PEC, orders for costs would remain at the discretion of the court. In enforcement proceedings, costs would automatically follow the event with power for the court to decide otherwise.[63]

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[54] *Planning and Environment Court Bill 2014* (Qld), <http://www.legislation.qld.gov.au/Bill_Pages/Bill_54_14.htm>.

[55] *Sustainable Planning Act 2009* (Qld) s 66.

[56] *Planning and Development Bill 2014* (Qld) cl 66. The Bill envisaged "Access rules" would be made stating what planning instruments and documents should be made accessible to the public – but these were never published. See cll 217-219.

[57] *Planning and Development Bill 2014* (Qld) cll 38, 48.

[58] Planning Reform Queensland, *Proposed Development Assessment Queensland System* (25 November 2014), App B, 21.

[59] *Planning and Development Bill 2014* (Qld) cl 43(6).

[60] *Planning and Development Bill 2014* (Qld) cll 82-83.

[61] Planning Reform Queensland, n 58, 9, 17.

[62] *Planning and Development Bill*, cl 50. The Bill envisaged a regulation prescribing the matters to be considered and addressed by referral agencies.

[63] *Planning and Development Bill 2014* (Qld) cl 52-55.

The intentions of the 2014 Bill were to "remove the barriers to efficient and effective plan making and development assessment".[64] While it aimed to give development proponents greater certainty, it also claimed that the community "will have confidence that the planning system promotes and protects their interests".[65] The above-mentioned reforms cast doubt on the extent to which this last objective would have been achieved.

In terms of bureaucratic streamlining, the results of this reform effort were barely more impressive. Instead of one (admittedly large) Act and one Regulation, the reform proposed a combination of three statutes, one regulation and development assessment rules with additional statutory guidelines for particular aspects of the planning system (infrastructure, plan-making etc). The table below compares the relative lengths of the current statute and the 2014 proposed reforms. The only comparison favourable to the 2014 draft statutory framework is between the total number of sections in the *Sustainable Planning Act* (996 sections) compared to the 2014 *Planning and Development Bill* (274 sections). That lead is reversed, however, when the additional two reform Bills are factored into the equation. Overall, the number of sections and page length of the three 2014 Bills significantly *exceeded* that of the system it was intending to replace. This was regardless of the fact that almost all of the procedural requirements relating to the Integrated Development Assessment System (IDAS) were excluded from any of the Bills - they were destined for separate regulatory rules. On the basis of this rather rudimentary comparison, the existing framework significantly outperformed the draft new framework on the LNP's own criteria of size, length and complexity.[66]

Table: Comparison of extent of current statute and proposed reforms

Existing Instrument	**Total no of sections**	**Total no of pages**	**Proposed new instruments**	**Total no. of sections**	**Total no of pages**
Sustainable Planning Act 2009	996 sections 2 schedules	472pp	*Planning and Development Bill 2014*	274 sections 2 schedules	257pp
			Planning and Environment Court Bill 2014	80 sections 1 schedule	41pp
			Planning and Development (Consequential) and Other Legislation Amendment Bill 2014	662 sections	292pp
Totals	994 sections 2 schedules	472pp		1,016 sections 3 schedules	590pp

The 2015 Planning and Development Bill

The 2014 *Planning and Development Bill* lapsed on 6 January 2015 but, even with the change of government, the momentum for change was not altogether lost. In May 2015, the new government released its own directions paper, *Better Planning for Queensland*, foreshadowing a new Planning Act. Introducing the publication, the Deputy Premier and Minister for Infrastructure, Local Government and Planning, Jackie Trad, stated:

> *Better Planning for Queensland* honours the Palaszczuk Government's promise to Queenslanders that we would listen to councils, communities and the development industry … [It] will bring together the community, industry and councils to help formulate a new Planning Act that can respond to the

[64] DSDIP, *Draft Planning and Development Bill 2014: Information Paper on the Consultation Draft*, 3.

[65] DSDIP, n 64, 4.

[66] DSDIP, n 64, 4.

> challenges of urban growth and is fair, open, transparent and easy to understand … I want residents to have a strong voice in the planning and development decisions that affect the neighbourhoods and communities where they work, live and play.[67]

Following through on this commitment to an open and consultative approach, the Department organised a Planning Summit in July 2015 involving over 200 representatives from the planning community including community and environmental groups. Two months later, a suite of new draft planning Bills (the September draft Bills) were released for public comment on 10 September 2015. As with the 2014 package, there were three Bills, a draft regulation and draft development assessment rules (now more fully embellished).

What had changed between the 2014 reform package and the September draft Bills released in 2015? Did the September draft Bills reflect the goals of transparency, accountability and community participation any better than their 2014 predecessors? The answer is yes, but only to some extent. In the September draft Bills three important changes were made. First, the over-arching goal of facilitating ecologically sustainable development (ESD) was stated up-front and in much greater detail than in the 2014 *Planning and Development Bill*. Second, in a change very welcome to community litigants, the draft *Planning and Environment Court Bill* provided that, in general, each party to proceedings in the PEC should bear their own costs.[68] Essentially, this would restore the costs rules that prevailed prior to 2012. Third, all impact assessable development would now remain subject to public notification with rights of appeal retained for any submitter (as is currently the case).[69]

Scrolling down to the fine detail, however, the reform program seemed to dissipate rapidly. In fact, of the nine concerning issues listed above only two were modified to any significant extent (points 3 and 9).[70] For a consultative, community focused government, the September draft Bills, though welcome in some respects, still seemed stacked full of industry driven "efficiencies" and "flexibilities". Why was this so? Did the September 2015 Bills perhaps reflect a cross party consensus on best practice planning principles?

Once again, the answer is, to some extent, yes. Before drafting the 2014 Planning Bills, the LNP government had consulted quite extensively with a variety of stakeholder groups including local government, peak bodies and industry representatives. From May 2013, monthly stakeholder forums took place and focus groups, comprising eminent practitioners across industry and local government, began to meet regularly from September 2013 to test reform ideas.[71] No doubt all this activity generated a momentum for change that bureaucrats in the Department, as well as stakeholders themselves, would have been reluctant to abandon the day the new government was formed. Peak industry groups were among the stakeholders that continued to lobby for change with the new government.[72] They appealed to a consensus regulatory agenda arguing the proposed new legislation would introduce a number of efficiency gains that would help stimulate economic growth.[73] Who could resist a package marketed that well? Needless to say, it was an agenda as appealing to the Palaszczuk government as it was to the Newman government (and others) before it.[74]

In the current situation, however, there was additional pressure on the new government, this time from within Parliament itself. In June 2015, the LNP member for Clayfield had introduced a private

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[67] Queensland Government, "Government Outlines Key Directions for Planning Reform" (Media statement, 25 May 2015), <http://statements.qld.gov.au/Statement/2015/5/25/government-outlines-key-directions-for-planning-reform>.

[68] *Draft Planning Bill*, cl 59.

[69] *Draft Planning Bill*, cl 51.

[70] Point 4 above was also modified to the extent that a 15-day notification period would be required for variation requests and notification periods were stated in the Bill not the development assessment rules. See *Draft Planning Bill*, cl 51.

[71] DSDIP, *Planning and Development Bill 2014 – Information Paper*, 2.

[72] Property Council of Australia, "Property Council of Australia Welcomes Queensland Planning Reform", 24 June 2015, <http://news.mdl.com.au/2015/06/24/property-council-of-australia-welcomes-qld-planning-reform/>.

[73] Property Council of Australia, n 72.

[74] See, DILGP, Directions Paper, *Better Planning for Queensland: Nest Steps in Planning Reform* (May 2015) 1-3. See further, England, n 10.

member's Bill to Parliament. The *Planning and Development (Planning for Prosperity) Bill 2015* (Qld), was in fact the 2014 *Planning and Development Bill* reintroduced to Parliament with virtually no amendments. In his First Reading speech, Mr Nicholls commented:

> By introducing these laws today, the LNP is ensuring we maintain momentum … In the last week we have seen various statements from the Deputy Premier about her commitment to planning reform. We saw the release of a discussion paper, which largely reflects the work undertaken when the LNP was in government, and we saw a commitment to introduce legislation at some stage. This again highlights the concern the business community has with this government. It wants to delay fundamental reforms for as long as it can. It is obvious that the legislation I am introducing today is the result of a comprehensive consultation process that will get the process moving again in Queensland.[75]

Clearly, the pressure was on the new government to place its own legislation before Parliament as soon as possible to avoid dealing any further with this private member's Bill and, apparently, to appease the business community.[76] Juggling stakeholders, reasserting the interests of the community and reversing the Newman agenda of bureaucratic downsizing at any cost is no easy task. It is an even more complicated one when the opposition (significant in numbers) is forging ahead with a legislative package of its own making. With almost equal numbers in Parliament and a history of completed stakeholder consultation behind it, the Opposition could validly claim a specific "mandate" to act on this matter – but to let the Opposition lead the way on such a significant piece of law reform would no doubt be a distasteful idea to any incumbent government.[77]

On 12 November 2015 a revised Bill – *Planning Bill 2015* (Qld) – was introduced to Parliament. With respect to transparency, accountability and public participation some significant improvements were made following public consultation. These included:

- introducing a requirement for assessment managers and referral agencies to publish reasons for their decisions on development applications;[78]
- introducing public notification processes for Ministerial rules and guidelines made under the Bills;[79]
- extending the period for public notification of planning schemes from 30 days to 40 days;[80]
- reinstating in the Bills the minimum timeframes for public notification in plan making;[81] and
- including some fundamental requirements in relation to public access to information in the Bill.[82]

These reforms respond positively to some but not all of the concerning issues identified above in the 2014 Bill. In particular, the introduction of a public notification process for Ministerial rules and guidelines deals neatly with community groups' concerns about the transfer of significant statutory rights into less well-entrenched rules and guidelines. We are also promised SARA's existing discretion will be curtailed to some extent.[83]

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[75] Mr Nicholls, Member for Clayfield, *Planning and Development (Planning for Prosperity) Bill*, Introduction to First Reading, Hansard – 014-015 / 04/06/2015, pp 1130-1131.

[76] Industry associations said to support the reforms include the Property Council of Australia and the Urban Development Institute of Australia. See, Nicholls, n 75.

[77] Emma Rooksby discusses the vexed question of identifying and delimiting the mandate of a minority government in E Rooksby, "Election as a Mandate" in H Cryle and J Hillier, *Consent and Consensus: Politics, Media and Governance in Twentieth Century Australia* (API Network, 2005) 219-232.

[78] *Planning Bill 2015* (Qld) cl 67(3).

[79] *Planning Bill 2015* (Qld) cll 68(30), 69(3).

[80] *Planning Bill 2015* (Qld) cl 10(3).

[81] *Planning Bill 2015* (Qld) cl 18(5).

[82] *Planning Bill 2015* (Qld) cl 263. For further information about the government's response to public consultation, see DILGP, *Draft Planning Bills 2015: Consultation Report* (November 2015), <http://www.dilgp.qld.gov.au/resources/planning/draft-planning-bills-consultation-report.pdf>.

[83] DILGP, n 82, 12.

There are still some areas where the government did not give ground despite concerns expressed by community groups. For instance, the extended lapsing period remains[84] and public notification periods for some types of development application will be shorter than is currently the case (although a regulation may provide otherwise).[85] The basic "simplified" structure – diverting procedural matters into separate regulations – remains intact as does the commitment to increased flexibility for development applicants. All in all, it appears the Minister has carried through on her commitment to listen to the concerns of the community subject to persevering with the cross party agenda of neo-liberal, micro-economic reforms to "streamline and simplify" planning legislation (whether or not that is actually the case).

Reform of land clearing laws

The above examples demonstrate that, to date, the Palaszczuk government has performed reasonably well as a listening and accountable government, committed to empowering local communities. However, these examples relate either to very specific election promises made to particular communities or to relatively non-controversial law reforms. Will the same strategy of "listening to the community" work so well for the government when the issue at hand is a hugely divisive one in which one segment of the "community" is pitched against another? There is perhaps no better example than in the area of land clearing laws.

In Queensland, the *Vegetation Management Act 1999* (Qld) places restrictions on the clearing of remnant vegetation. Since its inception in 1999, the life of the *Vegetation Management Act* has been turbulent.[86] In 2004, the Act was amended to ensure the phasing out of broadscale clearing of remnant vegetation by December 2006.[87] In 2009, the Act was amended again to extend protection to high-value regrowth vegetation including mature native vegetation that had not been cleared since 31 December 1989.[88] These reforms strengthened the *Vegetation Management Act* framework and extended its reach. In 2013, however, the LNP government reversed that trend and amended the Act to allow self-assessment against applicable codes for smaller operations and to abolish all regulatory controls on the clearing of high-value regrowth vegetation on freehold and Indigenous land. Even more controversially, the 2013 amendments allowed the clearing of native vegetation (remnant or regrowth) for new agricultural activities if the proposed development could satisfy a range of criteria including: land suitability, business viability and measures to avoid or minimise environmental impacts.[89] While this was not quite the unregulated broadscale clearing of native vegetation for which Queensland was notorious in the past, these reforms meant that the State's diminishing remnant vegetation was no longer safe from development. It is estimated that 275,000 hectares were cleared in 2014 (triple the amount cleared in 2010) with one permit, relating to Olive Vale Station in Cape York, allowing the clearing of 33,000 hectares.[90]

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[84] *Planning Bill 2015* (Qld) cl 85.

[85] *Planning Bill 2015* (Qld) cl 53(4).

[86] J Kehoe, "Land Clearing in Queensland" (2006) 23 EPLJ 77; J Kehoe, "Environmental Law Making in Queensland: The Vegetation Management Act 1999 (Qld)" (2009) 26 EPLJ 77; C McGrath, "End of Broadscale Clearing in Queensland" (2007) 24 EPLJ 5; The Wilderness Society, "Land Clearing in Queensland", <https://www.wilderness.org.au/land-clearing-queensland#4>.

[87] *Vegetation Management and Other Legislation Amendment Act 2004* (Qld) s 3.

[88] *Vegetation Management and Other Legislation Amendment Act 2009* (Qld) s 4.

[89] *Vegetation Management Framework Amendment Act 2013* (Qld) ss 3, 11, 46-47.

[90] M Maron et al, "Land Clearing in Queensland Triples After Policy Ping Pong", *The Conversation*, 18 March 2015, <http://theconversation.com/land-clearing-in-queensland-triples-after-policy-ping-pong-38279>; The Wilderness Society, "Large Scale Clearing Returns to Queensland", 9 September 2015, <https://www.wilderness.org.au/articles/large-scale-land-clearing-returns-queensland>.

Happily for environmentalists, Queensland Labor's *State Policy Platform 2014* committed the Labor Party to ending broad-acre clearing and clearing of endangered and threatened regional ecosystems.[91] This commitment was confirmed by the ALP party leader during the election campaign[92] despite some vocal opposition from the farmers' lobby group, Agforce:

> This is back to the old stick, unfortunately, and there's not much carrot. It's just a good, old case of bashing the bush and bashing farmers.[93]

However, once in government, the new government quickly seemed to soften its line on land clearing. In March 2015, the Minister for Natural Resources and Mines announced:

> There will be no rushed changes to the *Vegetation Management Act 1999* … I intend to get my boots dirty to see the laws in action for myself and consult broadly. I want to see what works well before I consider any options.[94]

Land clearing in Queensland has always been a hotly contested topic with some entrenched (and highly vocal) opinions on either side of the debate. In these circumstances, the government's "consult and consider" strategy shows signs of weakness. While the government sets about reconciling seemingly intractable positions, extensive land clearing persists. Before its departure from government, the LNP licensed the clearing of an additional 113,000 hectares of old growth vegetation. Clearing on that scale will release an estimated 60 million tonnes of greenhouse gases – ie 13 million tonnes more than the amount expected to be mitigated by the federal government's Emissions Reduction Fund.[95] The irony is acute.

Impatient with the new government's delays in regulatory action, environmental activists ramped up their campaign to expose this hypocrisy. Graphic footage of forests being bulldozed on the Olive Vale Station were posted on the internet.[96] Additionally, the Australian Conservation Foundation and the Wilderness Society raised concerns about the potential impact of land clearing at Olive Vale Station on two endangered birds-the Buff Breasted Button Quail and the Red Goshawk.[97] These species qualify as "matters of national environmental significance" so any activity that may cause a significant impact on these species needs to be referred to the Commonwealth for environmental impact assessment under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth). Forced into action, in June 2015 the Queensland and Commonwealth governments sent a joint investigative team to Olive Vale Station and the landholder "voluntarily" undertook to temporarily halt clearing the land.

In September 2015, in response to more criticism from environmental groups, the Minister for Natural Resources and Mines promised new legislation in early 2016, but warned "it's not just a simple matter of turning the legislative clock back" and reiterated his commitment to "thorough consultation and analysis before jumping to any hasty changes to laws".[98]

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[91] Queensland Labor, *State Policy Platform 2014*, 39, [5.50]. See also, Queensland Labor, *State Policy Platform 2015*, 35.

[92] C Hough and C Mckillop, "Labor Reignites Debate on Tree Clearing Laws in Queensland Ahead of State Election", *ABC News*, 22 January 2015, <http://www.abc.net.au/news/2015-01-21/alp-reignites-landclearing-debate/6032484>.

[93] Hough and Mckillop, n 92.

[94] Queensland Government, "Vegetation Management Business as Usual" (Media statement, 5 March 2015), <http://statements.qld.gov.au/Statement/2015/3/5/vegetation-management-business-as-usual>.

[95] L Schneiders, "Passing the Buck on Land Clearing Costs the Country Dearly", *The Australian*, 18 June 2015, <http://www.theaustralian.com.au/opinion/passing-the-buck-on-land-clearing-costs-the-country-dearly/story-e6frg6zo-1227402902327>. In September 2015 the WWF reported that approved clearing for high-value agriculture would produce at least 11.7m tonnes of carbon emissions or 40% of carbon farming abatement acquired through the ERF. See J Robertson, "Deforestation Surges in Queensland Ahead of Crackdown on Clearing", *The Guardian*, 17 September 2015, <http://www.theguardian.com/environment/2015/sep/17/deforestation-surges-in-queensland-ahead-of-crackdown-on-land- clearing>.

[96] K Trapnell, "Bulldozers and Chain Clearing at Olive Vale Late May 2015", Wilderness Society, <https://www.youtube.com/watch?v=qRtl7o_tX8E>.

[97] "ACF Welcomes Halt to Land Clearing at Olive Vale" (Media release, 16 June 2015), <http://www.acfonline.org.au/news-media/media-release/acf-welcomes-halt-land-clearing-olive-vale>.

[98] See Robertson, n 95.

At the time of writing, news is still pending on any specific amendments planned for the *Vegetation Management Act*. History suggests that the government will have an uphill battle forging a consensus (or even a workable agreement) on this divisive issue. Academic literature suggests that building consensus in such acrimonious situations is at best a long-term enterprise and, at worst, a utopian dream – ie simply impossible.[99] In either case, the environment is put at risk.

CONCLUSION

The Labor Party championed the 2015 election with an agenda premised on consultation, transparency and accountability. This strategy echoes theories of communicative planning and collaborative environmental governance.[100] It was welcome news to the electorate in early 2015 but was not without its own ambiguities. The spectacular election result was as much a backlash against the Newman government as it was an endorsement of Labor's own policy platform. Over time, this issue, along with the poorly informed nature of the electorate generally, may compound the difficulties for a minority government claiming a general mandate to govern.[101] A more fundamental problem for the Palaszczuk government, however, is the well documented limitations of collaborative governance in general – power imbalances, polarised positions, unspoken agendas and ultimately the disaffection of those participants who feel their views have not been given genuine consideration.[102] In many instances, the most enduring outcome of public consultation exercises is a "sphere of antagonism"[103] between citizens, government and stakeholders leading to "stultifying and bigoted debates",[104] a very real prospect in the current (and historic) land clearing controversy.

There are strategies for dealing with the limitations of collaborative governance but in general these involve government taking a strong hand:

> Consensus building did not happen spontaneously. All the cases [that were investigated] had either a legislative mandate or committed leadership to start them off along with incentives for key players to seek agreement … In all the cases, players were brought to the table and kept there, searching for agreement with their adversaries, by external incentives: avoiding the costs of delay, litigation or inaction, as well as governmental action that might impose undesirable solutions.[105]

For the Palaszczuk government taking a "strong hand" on specifically mandated, high-profile and localised election promises was one thing but claiming a general mandate and driving the political agenda on more complex and/or historically divisive debates may prove quite another. This is evident with respect to both land clearing and planning law reform. In these areas, vocal industry stakeholders and a strong opposition in Parliament render the task of political leadership a lot more problematic. Past research suggests a deliberative and participatory agenda may help resolve but will not fix the

[99] S Abram, "Planning the Public: Some Comments on Empirical Problems for Planning Theory" (2000) 19 *Journal of Planning Education and Research* 351, 355; C Holley and D Sinclair, "Deliberative Participation, Environmental Law and Collaborative Governance: Insights from Surface and Groundwater Studies" (2013) 30 EPLJ 32, 37.

[100] R Stewart, "'New Politics' Announces Itself in Queensland and Beyond", *The Conversation*, 11 February 2015, <https://theconversation.com/new-politics-announces-itself-in-queensland-and-beyond-37101>.

[101] Rooksby, n 77, 227.

[102] From the planning literature, see generally, M Huxley, "The Limits to Communicative Planning" (2000) 19 *Journal of Planning Education and Research* 369; R Fischler, "Communicative Planning Theory: A Foucauldian Assessment" (2000) 19 *Journal of Planning Education and Research* 358; Abram, n 99. From environmental governance literature, see Holley and Sinclair, n 99; R Abers, "Reflections on What Makes Empowered Participatory Governance Happen" in A Fung and E Wright (eds), *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance* (Verso, 2003); A Cohen, "Negotiation Meet New Governance: Interests, Skills and Selves" (2008) *Law and Social Inquiry* 503; C Holley, "Public Participation, Environmental Law and New Governance: Lessons for Designing Inclusive and Representative Participatory Processes" (2010) 27 EPLJ 360; M Imperial and D Kauneckis, "Moving from Conflict to Collaboration: Lessons from the Lake Tehoe Experience" (2003) 43(4) *Natural Resources Journal* 1009.

[103] W Versteeg and M Hajer, "Is This How It Is, Or Is This How It Is Here? Making Sense of Politics in Planning" in J Hillier and P Healey (eds), *The Ashgate Research Companion to Planning Theory: Conceptual Challenges for Spatial Planning* (Ashgate Publishing, Farnham, 2010) 159, 166.

[104] Versteeg and Hajer, n 103.

[105] Innes cited in Fischler, n 102, 365.

policy vacuum: leadership will be required.[106] Will that leadership be forthcoming from a minority government espousing "community responsiveness" as its fulcrum? In the context of planning law reform, there are signs that the government is willing and committed to taking a lead on protecting community rights subject to the uncontested micro-economic reform agenda of simplifying planning law. In this area, specific reforms made to protect community rights are unlikely to "rock the boat" to any great extent and there is a large measure of cross party consensus on the direction of reform. That situation is wholly reversed, however, in the context of land clearing. This debate is rife with controversy and divided opinions with little or no common ground between political parties or the various stakeholders. In these circumstances, it is not so surprising that the "collaborative" Palaszczuk government quickly backed away from its strong leadership position and "put on hold" its policy commitment to reform the law in this area. However, engaging in broad consultation with the community and taking the time to get firsthand experience may simply prove ineffectual in this highly acrimonious debate.[107] Even if a collaborative deal can be struck in the long term, the environment looks set to suffer in the meantime.

For the Palaszczuk government, following a collaborative governance path is both advantageous and problematic. On the plus side of the equation, the Palaszczuk government's agenda of consulting widely and operating more transparently no doubt serves to enhance the "legitimacy" of its ongoing decisions:

> Outcomes are legitimate to the extent they receive reflective assent through participation in authentic deliberation by all those subject to the decision in question.[108]

This is an important result because, in a hung Parliament, it will always be problematic for a minority government to claim it has a "general mandate to govern" (despite the huge swing in its favour).[109] On the down side, there is much evidence that consultation and participation are not a panacea for decision-makers.[110] Where the stakes are high and existing opinions are highly divided, it may just compound the grievances. Leadership is necessary, if only to frame and steer the debate. Lastly, a collaborative approach may introduce another risk, the risk of capture.[111] While fulfilling particular election promises made to specific and vocal electorates may amount to "honest and accountable" government in the short term, in the long term that strategy will be self-defeating if the most vocal stakeholders on any given issue are always allowed to hold sway. That would be a government held to ransom rather than one based on consultation, integrity and accountability.

[106] Fischler, n 102, 365.

[107] See generally, Abram, n 99, 355.

[108] Dryzek discussing the work of Joshua Cohen in J Dryzek, "Legitimacy and Economy in Deliberative Democracy" (2001) 29 *Political Theory* 651, 651.

[109] Rooksby, n 77.

[110] Abram, n 99, 355; Holley and Sinclair, n 99, 37.

[111] Holley and Sinclair, n 99, 35; O Lobel, "The Renew Deal: The Fall of Regulation and Rise of Governance in Contemporary Legal Thought" (2004) 89 *Minnesota Law Review* 342, 373; Versteeg and Hajer, n 103, 163.