IpswichCity Council Submission to the Environment, Agriculture, Resources and Energy Committee on the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012*

(Officer Comments Only)

Executive Summary

Ipswich City Council, like all other local governments in Queensland, has been actively regulating environmentally relevant activities (ERAs) under the *Environmental Protection Act 1994*. Council appreciates the opportunity to review and provide comment on this important piece of legislation. The following represents some of the key comments regarding the proposed legislation:

1. The overall intentions of the Greentape Reduction project are supported
2. Only a small (and high level) part of the regulatory reform process has been presented / is available for consideration
3. Standard Approvals are generally supported, subject to active and open engagement with the key stakeholders
4. Environmental Authorities are generally supported as the documentation for conditions for ERAs
5. Environmental Authorities to contain conditions that relate to design, construction, equipment and operational requirements for an ERA – no ERA relevant conditions to be included in a development permit
6. The register of suitable operators being managed by the Department of Environment and Heritage Protection (DEHP) is generally supported, subject to confirmation of its management and access
7. Corporate Authorities as detailed in the Bill are generally supported
8. Guidelines as detailed in the Bill are generally supported where they further the objects of consistency, accuracy and effective implementation of the legislation
9. Further consultation with Council regarding the supporting and related legislation and Guidelines to support the Bill's implementation
10. The appropriate assessment, evaluation and consideration of the impacts of this Bill and the other related actions on Council, the industry and the community – especially where activities may be deregulated resulting in Council's becoming responsible.

Introduction

Ipswich City Council appreciates the opportunity to provide a further submission to you in regards to this significant legislative change proposal. As you are aware, Local Government shares the responsibility in administering the *Environmental Protection Act 1994* with the State Government (principally with Department of Environment and Heritage Protection). Considering this, Council has invested significant resource in assisting the review of this legislation to date through the Local Government Working Group and the Local Government Panel processes. Council is appreciative of the cooperative and consultative process that has been undertaken throughout this review activity and looks forward to this arrangement continuing through the implementation and transitional phases of this legislation change, as well as any further associated legislation and related documents development (including the Regulation, review of licensable ERAs etc.).

Context of this Submission

These comments are a compilation of comments provided by officers of Ipswich City Council that are primarily based on previously endorsed comments and submissions made by Ipswich City Council. Some comments are new based on the differences between the 2011 and 2012 versions of this Bill. Due to the very short timeframe for review and comment provision on this Bill, it has not been possible to present this document to Council for consideration and decision. Therefore, these views do not necessarily represent the views of the Council. It is intended that these comments will be submitted to Council for consideration.

Limitations of Available Information on Full Legislative Change Proposal

The comments made within this submission are based on the information available at the time of writing. It is noted and understood that there are other legislative changes proposed that are directly related to, dependent upon, and supported by this proposed Act. Some of these include:

- any amendments to the *Environmental ProtectionRegulation 2008, including:*
    - any review of the environmentally relevant activities that are regulated by a licensing regime
    - the manner in which environmentally relevant activities are regulated (including the allocation of environmentally relevant activities to the standard application process category)
    - the development of the eligibility criteria for standard applications
- the development of "Guidelines" (as described in the Bill – Clause 51), and
- the modifications to triggers within the *Sustainable Planning Act 2009*.

Considering only a small component of the overall regulatory change picture is available, it is very difficult for Council to undertake a thorough and complete review of the proposed changes, including its impacts (positive and negative) on the environment, the community, industry and the Act's Administering Authorities. Therefore, the assessment undertaken and the comment providedare with this in mind.

Overall Intentions of the Bill

In general, the following overall intentions of the Greentape projectare supported:

- a simplification of licensing processes
- reduction of costs to industry and government from environmental regulation while maintaining or improving environmental standards and community amenity
- streamline, integration and coordination of regulatory requirements relevant to licensing under the *Environmental Protection Act*
- upholding of key principles of transparency, accountability, consistency, proportionality, integration and delivery of appropriate outcomes
- that regulatory effort (assessment, administration and compliance)is based on risk
- that applicants, operators, the community and regulators have consistent understanding and access to information to support the successful achievement of the Act's purpose
- the achievement of a level playing field for industry in terms of environmental regulation
- third party reviewer roles (as long as this remains solely within the State jurisdictions and not Local Government jurisdictions) and that the system of accreditation and auditing of these services are maintained in a quality system.

In general the following overall intentions / outcomes are not supported:

- a move towards additional administrative burden (in both short and longer terms) for the administering authorities
- a reduction in opportunities for cost recovery for regulatory agencies, and
- a return to a licensing framework that involves an increased number of types of regulatory approvals.

It is worth noting that during the review process associated with this Bill, a number of key deficiencieswere identified and raised for consideration, including:

- a lack of an identification of options at a strategic level that lead to reducing green tape, a transparent evaluation and analysis of such options, and subsequent justification for the preferred options presented, and
- a heavy focus on assessment processes and not a balanced, whole of life-cycle review of environmental licensing reform opportunities and implications.

Environmentally Relevant Activity Administration

The review undertaken prior to developing this Bill has involved a consideration of a number of assessment pathways for conditioning environmentally relevant activities (ERAs). The framework of standard approval / conditions and site specific assessment processes are supported. The degradation of the licensing framework for environmentally relevant activities to levels below standard approvals levels of assessment is categorically not supported.

It is supported that the 2012 Bill is now collectively transitioning all existing environmentally relevant activities to the new licensing system, avoiding the previous systems of multiple types of approvals and the problems this caused.

It is clear that the Government's intention is to move to an environmental protection licensing framework that is focused on Environmental Authorities. Considering this and Council's previous comments and submissions about the licensing framework options and issues, Council generally supportsthis approach as long as a single system of management is achieved – that is, Environmental Authorities regulate the environmentally relevant activities. Council sees one key deficiency in the Bill's framework being the separation of design/construction conditions and operating conditionsassociated with environmentally relevant activities. History of regulating environmentally relevant activities has demonstrated clearly that variations from a single process for managing these activities results in confusion, unnecessary costs, and inefficiencies which have not delivered the best environmental outcomes possible.

Therefore, Council recommends that all conditions related to an Environmentally Relevant Activity be contained within one document, an Environmental Authority. This position is supported due to the fact that environmental protection outcomes , issues and considerations (and subsequent conditions for the activity) lie along a continuum consisting of design, construction, equipment / technology and operational requirements. The differences and dependencies between these can be slight to significant dependent upon the particular activity. Achievement of some operational requirements are generally dependent upon good design and construction outcomes.

A further issue of concern relates to the transition of existing Development Permits to the new system. The concern arises in converting a development permit into the proposed Development Permit (design and construction conditions) and the Environmental Authority (operating conditions). As these have previously been compiled as a collective system, splitting them may be problematic, piecemeal and an unnecessary administrative burden. This is not supported as it does not achieve the certainty for all parties involved or a singular administrative system for environmentally relevant activity administration.

The key linkage between land use planning and environmental protection management (particularly environmentally relevant activities) is significant and requires some connection under the new arrangement. This is further discussed below.

Standard Conditions

The concept of standard conditions is supported to assist with green tape reduction. It is agreed that standard conditions may be applicable to some ERAs (especially those of a small to medium sized activity and those of a lower environmental risk) resulting in benefits to industry, community and regulators. The allocation of the applicable activities to this assessment track requires further scientific, economic, technological and social research and debate as detailed below. The existing Codes of Environmental Compliance (COEC) and for the reasons of administrative cost effectiveness described above provide some experience and basis on which to progress the standard conditions (including eligibility criteria) framework.

The creation of 'eligibility criteria' that are specific, minimal, definite and not open to debate is supported. Standard conditions should be supported by an administrative process which includes the provision of information to the operator that would include a copy of the conditions that are applicable, guidance material about licensing and compliance with the conditions a registration certificate etc. This will support more effective and efficient compliance actions (should these be necessary). Further consultation with the working groups and panels are required to determine what ERA's may fit in this category.

Variation applications (section 123)are<u>not</u> supported. For requests to alter conditions there is a potential that the amendment(s) can have effect on other conditions and/or be so significant that the activity requires site specific assessment. Setting a clear point along this continuum at which the assessment is escalated is difficult. Considering this, it is suggested that amendments are not permitted to be made to standard approvals and that these requests are escalated to site specific assessment processes.

The ability to update standard approvals / eligibility criteria to maintain consistency with best practice environmental management is supported. This provides the capacity to keep the conditions contemporary.

Site Specific Assessment

Site specific assessment is supported as the assessment track for many ERAs.

The practical implementation of the integration of ERA's into the Sustainable Planning Act's (SPA) Integrated Development Assessment System (IDAS) process has evolved into an outcome which is not consistent with the intent of the legislation. This has come about from an ineffective transition and regulator training program which, due to the terminology and the process used (i.e. IDAS), has become significantly and inappropriately embedded into land use planning and assessment mindset. The intent of the legislation is that land use planning and ERA assessment (licensing) are separate but closely relatedprocesses. Land use planning has a head of power of the SPA and essentially involves assessment of land uses against SPA and the Council's planning scheme provisions. In assessing ERAs, the head of power is the EPAct and this provides the criteria for assessing and conditioning these activities. The IDAS provides a mechanism where licensing is addressed through a process consistent with land use approvals and enables (if elected by the applicant) to integrate the approvals to speed the process.

The framework is appropriate, however, there is a need for recalibration of regulators (planning and environmental) through education and further guidanceto ensure the legislated outcomes are properly implemented. Considering this, and the Government's broad intention to move to environmental authorities, it is recommended that the frameworkproposed by the 2012 Bill be modified slightly to yield improved outcomes. This would involve all environmentally relevant activities being triggered as part of any land use application and the outputs being

environmentally relevant activity conditions being set in an environmental authority and the land use approval conditions be set on the land use development permit (if applicable). This would enable a level of consistency, but more importantly, conditions relevant to the risks and issues of the respective legislation.

Assignment of ERA's to Standard Conditions and Site Specific Assessment

The future assignment of ERA's to the appropriate level of assessment will require an ongoing process of active and open engagement with the Act's co-administrators. In terms of the local government ERAs, local government must have significant input into the assignment process.

ERA Conditions

It is supported that all ERAs have a document containing the conditions of operation (including design and construction conditions and operating conditions). This sets very clear advice about the operator's obligations and responsibilities. It is supported that the number of documents relevant to the licensing of the activity be minimised for clarity and simplicity. All conditions (design / construction and operation) are all ongoing requirements for an operator and must be regularly monitored to maintain compliance. In establishing a clearer layout and function of environmental authority conditions, the legislation must be clear that design and construction requirements for an ERA should not be dictated by the land use requirements / standards of the planning scheme. An integrated process of overall application assessment can assist with aligning the land use and environmental licensing requirements.

It is agreed that the conditions set require greater flexibility for modification / amendment through simplified processes for site specific assessed activities. However, currently, operators of activities wishing to change their operational conditions can do so without necessarily triggering a Material Change of use (MCU) for a new ERA. An MCU for ERA DA is only triggered where the SPA triggers are effected. In many situations, operational activities do not change the scale or intensity of the activity or nature of the business. However, there is a disparity between the practice and legislative intent, and it is supported that the SPA triggers be simplified and specified in more detail to eliminate these risks. In some situations, a change to operational requirements of an activity may trigger further assessment under the land use approval, but this is something determined under the SPA and planning scheme. If this occurs, and is considered in appropriate by the planning requirements, then this is a matter for discussion with Department of Local Government and Planning (DLGP) and Council land use planners.

Land Use vs ERA Conditions

It is worthwhile noting that land use planning has a number of foci that are considered important in decision making. Issues such as built form changes, footprint issues, use of space, aesthetics etc are just some of these. There is some overlap and potential for conflicting outcomes that a particular development must demonstrate. This is the role of the applicant to sort through and resolve with the assistance of the regulatory agencies. In many circumstances, where a minor change to an operation does trigger the need for a change to a land use planning approval, there is scope for these to be addressed though short and simple processes of minor amendments.

Sometimes there are duplicative or potentially inconsistent conditions for land use and ERA approvals. This is considered appropriate as there are likely to be valid and different sets of outcomes that need to be achieved under each head of power. The applicant and regulatory agencies have the capacity to negotiate these issues through for a balanced and acceptable outcome. It is important that legislative reform does not make one approval any more important than the other. Where there are concerns regarding the actions of the land use planning field on

environmental licensing outcomes, then this is a matter for discussion with DLGP and local government land use planners.

In regards to relaxations for operational changes for an ERA environmental authority, these would need to be relevant to changes that do not result in increased environmental harm (including nuisance). If this is the extent of the trigger, then this is generally supported. In other situations, it is suggested that these would require further assessment. In conjunction with this, the land use planning approval would need to be considered under the SPA arrangements. However, these two processes should not drive the other to require a new application so to achieve improved environmental outcomes.

There needs to be clear guidanceabout the differences and relationships between ERA management and land use matters that are assessable under a planning scheme. The broad consideration of the suitability of an area for industrial or a business land use is necessary when considering land use applications, whereas the regulatory operation and management of an ERA is a licensing matter.

It is important that Environmental Authority conditions (standard approval and site specific conditions) are not used to drive the planning outcomes, nor the planning requirements drive the environmental regulation outcomes. Rather, consideration of the two elements through the planning process (if applicable) yields improved outcomes. The operator of an activity is required to comply with both approvals and the respective regulators should work together to ensure consistency in the decisions wherever practicable, available and possible (in the interest of greentape reduction). Likewise,the standard approval conditions should not drive the requirements of planning schemes or development assessment. It is important to note that many planning outcomes are focused on containing the impacts of the development within a particular zone or parcel of land, whereas, environmental licensing aims to contain the emissions of concern to a parcel of land (wherever practicable). The outcome of this may involve the addition of an explanatory note on any land use approval that identifies that other approvals (such as an environmental authority) could be required and may apply to the requirements of operating an activity on the site.

Enforcement

With the proposed split of conditions between the development permit and the environmental authority, so to a split of enforcement capability occurs. In regulating the environmental impacts of an ERA, the Environmental protection Act has evolved to provide a range of tools that can be used to address the issue at hand. The Sustainable Planning Act does not contain such a suite of tools and is relatively inefficient for dealing with issues requiring quick attention. Considering this, it is recommended that all conditions relating to an ERA be contained within the environmental authority so that these enforcement tools can be used appropriately. In doing so, there are savings in terms of delegations, authorisations and training for Authorised persons in enforcing the legislation.

Statement of Compliance

The Statement of Compliance tool is supported in principle. It is considered of great assistance in the appropriate staging of the approval processes for an environmentally relevant activity. The scope and application of it would require further guidance to ensure appropriate implementation. It is supported as it assists proponents to provide the appropriate information at the most appropriate timing of the process.

ERA Registration

In establishing the suitability of an operator, there is a need to set clear and transparent rules around what makes an unsuitable operator. The 2012 Bill provides the building blocks for clarity in this area. However, the Bill does not contain sufficient information about the mechanics of the proposed DEHP administered system. It is assumed that this will be developed as part of the review of the regulation. The key issues include:

- What level of access will the Administering Authorities (including Local Government) be provided? It is expected that there would be daily enquiries of such a system so to facilitate the administration of the environmental authorities and it is recommended that this be readily accessible.
- What processes, obligations and responsibilities are there for Administering Authorities to provide input to and evidence to support changes to the Register?
- Will the register be publically available?

Ancillary ERAs

The Bill does notaddress incidental activities associated with an ERA. If an activity is significant enough to trigger as an ERA (whether it is ancillary or otherwise), then they should be administered equitably. Where incidental activities would be the same as 'ancillary activities', this approach will have a significant impact on revenue to cover the cost of administration for the regulator. There may be a number of related activities being conducted by the operator, with each being of a reasonable component of the business. There is a need toadd clarity and transparency to this issue. It is suggested that the current system remain (i.e. some activities are automatically included as a part of the ERA – e.g. asphalt manufacturing and chemical storage) and others require additional arrangements. Another alternative is to establish fees for parent and child activities – i.e. whereby the main activity is charged at full fee and associated activities on the site being charged a proportion of the full fee so to recover administrative costs.

Corporate Authorities

It is generally supported that a single authority for multiple activities be continued to be implemented as long as cost recovery is available for the regulator. The concept of a corporate operator authority (where it is not restricted to one particular property) already exists in the Environmental Protection Act (i.e. multi-registration). The improvements suggested in the original greentape reduction discussion paper were about streamlined processes of monitoring, reporting, management systems etc. These concepts are generally supported and it is suggested that these be included into the current provisions to improve the system. This could be achieved by dividing the approval document into general conditions (which could contain 'standard conditions') for generic issues and another section for site specific requirements.

Changing Anniversary Date

The proposed changes to the process involved with changing the anniversary date of and environmentally relevant activity is supported as it reduces the inefficient process associated with the fee impacts.

Improving the quality of information

It is strongly held that the current lack of clear, concise and plain language guidance for regulators, industry and the community needs to be addressed and improved. The following initiatives are considered vital in this process so to support the effective implementation of the Bill / Act:

- education of proponents about what information is required to be submitted with their application (including implications of not providing a full application)
- the development of a contemporary and well researched Operators Compliance Guide (or similar) that has been based on contemporary scientific research, practicability, financial and social considerations (note, as previously supported by the Environmental Protection Partnerships Forum, DEHP should fund cooperatively with Local Government and DEEDI a review process similar to that undertaken by Brisbane City Council in reviewing some OCG's)
- provision of guidance about the best time for information and level of detail of information to be provided
- templates fact sheets, guidelines, flow charts etc
- advice about selecting consultants and the expectations of such services
- plain language information about the SPA ERA triggers
- information and clarification about the land use – environmental licensing relationship.

It is worthwhile noting that there are some activities that cannot, and should not, avoid the provision of detailed and complex information (e.g. noise or odour reports etc). This needs to be made clear to all parties involved.

The Bill does not extend to consider administrative opportunities for reducing green tape. It is supported that the Standard Criteria (and also the Environmental Management Decisions) be reviewed, updated, simplified and clarified so to support their more efficient use and application. The current practicability of these areinefficient, but is critical in delivering quality decisions. This should also be consulted through the Local Government Working Group and Panel.

The proposed creation of Guidelines under proposed sections 548 and 549 are generally supported for the matters raised above. However, the section 548 is not limited. Considering this, the scope of the section should be limited to issues of technical nature, consistency in application of law and similar issues and not about directions that Administering Authorities should take in their business.

Implementation Impacts on Local Government

Considering the number of times that the administrative systems associated with environmentally relevant activities has been changed since commencement of the EP Act, the administrative re-engineering efforts just to meet legislative change have been substantial. As stated in Council's submission to the 2011 Bill, most of the significant ERA licensing system reforms brought a significant cost imposition on Local Government, DEEDI and DEHP to implement the changes. So to minimise the costs of change, it has been previously suggested that the existing framework be modified to achieve the flexibility proposed by the 2011Bill, rather than changing the framework. In accepting the Government's drive to implement an Environmental Authority based system, significant changes to administrative systems, processes, documents, scripting as well as staff training and customer management will be borne by the Administering Authorities. This correlates to significant cost implications. It does not appear that these have been considered in the calculations being made throughout the development of this Bill. Although Ipswich City Council is yet to fully determine the costs of these administrative activities (as it cannot be determined from the

information available), it is expected to be in the many thousands of dollars to implement. This is not considered to be appropriate when alternative models could reduce such costs.

The further reduction of Greentapecosts borne bythe Administering Authorities can be minmisedby a strong commitment by DEHPin providing the necessary support, training and resources as part of the implementation of the Bill / Act. This would include, but not be limited to the following: interpretation tools, flow charts, template documents and letters, transitional understandings / fact sheets, identification of likely system changes, officer training etc.

It appears from the information available with this project, that the changes will commence at a date to be proclaimed. This is supported to be a commencement date that is following a reasonable amount of time during which the changes can be undertaken ready for implementation following commencement. This is vital to an efficient transition as has been demonstrated through numerous errors of the past. The transitional arrangements appear to be appropriate subject to the above support being provided. Council looks forward to working with DEHP, other LGs, and representatives of the community and industry in progressing the transitions.

Although not specifically addressed by the Bill, the review of Environmentally Relevant Activities, especially the deregulation of particular activities, will result in greater regulatory burden being placed on Local Government and this is not supported, unless it is appropriately financially and otherwise supported to take on the expanded responsibility.

Ongoing Support

Council looks forward to the open and ongoing effective engagement with DEHP, industry and the community on this legislation and the implementation of the new framework. This is expected that this will commence with Regulation changes (including a review of the environmentally relevant activities), the allocation of environmentally relevant activities to standard and site specific assessment processes and Guideline development. As part of the implementation of these changes, Council will be looking to the State to show their leadership and significantly assist the Council effectively and efficiently implement the legislation.

Comments regarding Specific Provisions of the Bill

The following are comments relevant to specific sections of the Bill:

Section Name or number*	Comment	Proposed solution
173(1)(b)	This is not required and should be deleted. This is because one must be a suitable operator before an Environmental Authority can be issued.	Delete 173(1)(b)
198(1)(b)	This refers to conditions that the applicant has not agreed to, however, there appears to be no reference to when, how and why an applicant would be given the conditions seeking their agreement	Clarify this requirement or delete.
200(1)	Each of these trigger dates could be included in an Environmental Authority. It is suggested that these 3 triggers be listed as a hierarchy so to avoid confusion.	Amend the provision.
204(2)	This could easily be included as a standard condition as detailed in Section 318D (p142 of the 2012 Bill)	Consider the removal of subsection (2)
214(1)(c)	This refers to section 321(4)(b). It is believed that this should be section 321(4).	Confirm correct provision
318D	Consider the inclusion of the requirements of section 204(2) as a standard condition.	Consider amending the section.
318J	This could be confusing and problematic. An operator may receive their notice under section 318I(1)(a) but their name may not be entered into the register as required by section 318(1)(b). It is	Consider amending the section

Section Name or number*	Comment	Proposed solution
	suggested that the registration takes effect on the business day following the achievement of section 318I(1)(a) is undertaken.	
Division 2 – Environmental Audits	It is suggested that the following note be added: "An environmental report about an environmental audit must be prepared by an auditor. See section 574A.	Consider adding note.
326E	The person preparing the environmental evaluation should also provide a declaration similar to that provided by the recipient. The declarations appear to address the recipient providing information etc to the preparer of a report but no provision addressing the author of the report about similar standards. The linkage to sections 564-566 could be improved if relevant.	Consider adding this requirement
326F(1)	The term environmental investigation be replaced with environmental evaluation as the scope of the provision should apply to audits and investigations.	Consider amendment
326G(1) and 326G(3) and 326G(5)	The term environmental investigation be replaced with environmental evaluation as the scope of the provision should apply to audits and investigations.	Consider amendments
326H	The reference to section 326G be amended to show 326G(4)(a)	Consider amendment
326I(2)	The term environmental investigation be replaced with environmental evaluation as the scope of the provision should apply to audits and investigations.	Consider amendments
Clause 10 (exclusion of s 328)	This provision generally enabled extensions of time for considerations of detailed and complex issues. It is suggested to be retained, but aligned with the other information request response	Consider amendments

Section Name or number*	Comment	Proposed solution
	period timeframes within the Bill.	
Clause 24 (Amendment of s 347)	The term “prescribed transitional environmental program” is limited to activities that do not hold an environmental authority. It is unclear why sites with an environmental authority would be excluded from this provision. It is suggested that irrespective of the transitional environmental program, that this be notified.	Consider amendment
677(4)	This does not address a situation where the anniversary date has been changed after the original date being set in accordance with the Act. It is suggested that this be modified to also reflect changed anniversary dates.	Consider amendment
679(4)	This does not address a situation where the anniversary date has been changed after the original date being set in accordance with the Act. It is suggested that this be modified to also reflect changed anniversary dates.	Consider amendment
680(3)	This does not address a situation where the anniversary date has been changed after the original date being set in accordance with the Act. It is suggested that this be modified to also reflect changed anniversary dates.	Consider amendment
Division 4 – Decisions under Chapter 7	• 326B(2) - change prescribed activity to an activity • 326C(1)(c) – change a prescribed activity to an activity • 326(4)(b) – change investigation for a prescribed activity to evaluation • 326I(4)(b) change investigation to evaluation	Consider amendments

Section Name or number*	Comment	Proposed solution
	• 326I(4)(b) delete for a prescribed ERA	
Definition – environmental offence	These are a great start on defining suitable v unsuitable operator. It is suggested that the scope of this could be broadened to include breaches of Environmental Protection Orders (not including those of a minor or administrative nature), continuous operation of an ERA without registration / EA, convictions for major environmental breaches.	Consider amendment

Section Name or number*	Comment	Proposed solution