Ipswich City Council Submission to the Environment, Agriculture, Resources and Energy Committee on the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011*

(Officer Comments Only)

Introduction

Ipswich City Council appreciates the opportunity to provide a 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 Resource Management). 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.

Context of this Submission

These comments are a compilation of comments provided by officers of Ipswich City Council that are based on previously endorsed comments and submissions made by Ipswich City Council. Due to the timeframe for review and provide comment 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. Following this, endorsed comments will be provided to you.

Overall Intentions of the Bill

In general, the following overall intentions / outcomes of the Bill are 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
- 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).

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 deficiencies were 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 Assessment

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 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.

As Bill is not to be retrospectively applied to existing development permits / registrations, nor compulsorily transitioned across from the existing system, there is clear evidence that the licensing framework would return to an earlier era of licensing where there were multiple types of approvals regulating ERA's. The old regulatory framework was changed due to significant concern by industry and regulators about the lack of a level playing field, transparency and consistency. Such a model requires modifications to the administering authority's licensing systems which will incur significant costs to implement. It is not supported to return to this arrangement. For this reason, the retention of the development approval and registration system remains as the preferred approach.

The following table that describes the history of ERA licensing supports these concerns.

Years	**Types of ERA approvals**
1995-1998	Integrated authority; Level 1 licence; Provisional licence; Level 2 approval; Deemed approval (level 2 ERAs).
1998-2004	Integrated authority; Level 1 approval (without DA); Level 1 approval (with DA); Level 1 licence (without DA); Level 1 licence (with DA); Provisional licence; Level 2 approval (without DA); Development approval for level 2 ERA; Deemed approval (level 2 ERAs) **Note: Several ERA levels and definitions changed with the introduction of the 1998 Regulation and Chapter 4 Activities were introduced in 2001 (i.e. renaming of ERA type).*
2004-2010	DA or equivalent of DA (e.g. former licence/approval) and Registration Certificate; Deemed approval. *Note: From 1 January 2009 some ERAs were no longer regulated, thresholds and definitions for several ERAs changed, etc.
2011-current	DA or equivalent of DA (e.g. former licence/approval) and Registration Certificate.

With most of the significant ERA licensing system reforms, there has been a significant cost imposition on Local Government, DEEDI and DERM to implement the changes. So to minimise the costs of change, it is suggested that the existing framework be modified to achieve the flexibility proposed by this Bill, rather than changing the framework. A return to previous eras of the Environmental Protection Act's evolution, where multiple types of licences existed, is considered to be confusing to regulators, industry and the community. This is considered to be a backward step and is not supported.

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. These look and feel very similar to the existing Codes of Environmental Compliance (COEC) and for the reasons of administrative cost effectiveness described above, are suggested to be the framework for standard conditions.

There are some shortcomings with the existing regime that could be easily modified so to achieve the standard conditions. 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.

The variation of standard conditions is generally not supported. For requests to alter all but very minor and small issues, there is a potential that the amendment of some conditions 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. This is demonstrated by the Bill (see Chapter 5, Part 7). Considering this, it is suggested that amendments are not permitted to be made to standard approvals and that these are escalated to site specific assessment processes.

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 integrated processes. 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 EPA and this provides the criteria for assessing and conditioning these activities / licences. The IDAS provides a mechanism where licensing is addressed through a process consistent with land use approvals an 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 to ensure the legislated outcomes are properly implemented.

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.

It is worthy considering the issue of sites that may include ERAs of both State and Local Government allocation (although would be State regulated). In these situations, there is a potential for different assessment processes applied to activities based on the State and Local Government allocation, which may not be consistent in the big picture. This should be considered before finalisation of the assessment allocations.

ERA Conditions

It is supported that all ERAs have a document containing the conditions of operation (including design and construction conditions and operating conditions) as well as a registration. This sets very clear advice about their obligations and responsibilities as operators. 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 development permit 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. However, IDAS does provide opportunities to work with applicants to ensure conflicting requirements of each system can be resolved through negotiation without compromising either of the required outcomes of the relevant legislation.

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 an 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 DA, 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 direction about the differences and relationships between ERA approvals 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.

ERA Registration

In establishing the suitability of a suitable operator, there is a need to set clear and transparent rules around what makes an unsuitable operator. The existing registration process is not a hindrance to transfer of businesses (although the Act requires a new registration to be issued and the old one cancelled). The real problem is the lack of the suitability test information and systems. The Bill does not address this issue with clarity with the term 'environmental record' which is not defined.

Ancillary ERAs

The Bill does not address 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 to add 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. The Bill could then be amended to state that where a corporate licence (or multiple registration) process applies, all general conditions of an ERA Development Permit will be

considered as one for this purpose for reducing administrative burden. This also supports the ease of transfer (and merger) of licences as activities are traded, sometimes in and out of a multiple registration arrangements.

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, DERM 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 DA 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 are quite low, but is critical in delivering quality decisions. This should also be consulted through the Local Government Working Group and Panel.

Implementation Impacts on Local Government

As briefly mentioned above, the Bill will result in significant changes to administrative systems, processes, documents, scripting as well as staff training and customer management being 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, it is expected to be in the tens of thousands of dollars to implement. This is not considered to be appropriate when alternative models could reduce such costs.

The reduction of these costs to the Administering Authorities can be effective where there is a strong commitment by DERM in providing the necessary support, training and resources as part of the implementation of the Bill. 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.

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
125	Missing components?	Include minimum requirements of identification of likely emissions and impacts, copy of development plans / layouts, technology details, pollution control equipment etc.
125(1)(k)	Impact of changes on other conditions	There needs to be capacity to amend other conditions (not identified within the scope of the application) for situations where a change to a condition results in the need to modify another. This should be with consent of course.
318G	What if no decision is made? What happens	Need for inclusion of a provision which clarifies this.
318H(a)	Applicant's environmental record is not defined, nor a clear scope of what is to be considered.	Provide a definition or scope of consideration in making this decision is to be included in the legislation
318H	There is a need to be able to extend the assessment and decision timeframes as this can be dependant upon other agency input (see later in Bill)	Include a provision to allow extensions where delays from other agencies who provide information are experienced.
318H(c) and 318K(a)(ii)	The provision "or have been" is very onerous. This should be linked to a cause and effect relationship – i.e. there is evidence (and to be substantiated in a court if required) that there was a direct or indirect influence or relationship of the breaches with the particular XO	Amend provision so that it relates to the proven relationship between the XO and the other company(s).
318J	Commencement of registration is not clear to operator or AA. Many	The date of commencement be date stated on environmental

Section Name or number*	Comment	Proposed solution
	licensing systems do not record the date of entering the data into the system (or not easily found) and this may be difficult to identify if needing to go to court.	authority. This will then be certain.
318R	This section requires timeframes to be included, otherwise S314 will be detrimentally affected. See comments above	Set timeframes for response.
318S	This section requires timeframes to be included, otherwise S314 will be detrimentally affected. See comments above	Set timeframes for response.
318U(2)	This poses significant record keeping issues / risks). Decision makers need to be able to justify their decisions and as such require record keeping. This record keeping needs to be secure. This may be necessary for review in later times	Reconsider this provision and its corporate memory issues.
318U(3)(a)	The term 'second person' is not clear.	Consider rewording for clarity
318V	Destruction of suitability reports is difficult if received electronically due to backup computer systems	Consider the implications of this matter.
343A	The purpose of this is not clear, and is confusing	Reword provision to apply as follows: 1. have an Environmental Authority 2. get a TEP 3. Issue amended Environmental Authority stating TEP now related and in place from xx/xx/xx to xx/xx/xx What this will do is raise the attention of the TEP without excessive administration and confusion. Issuing an amended Environmental Authority is appropriate in this circumstance.
(various)	Terminology is confusing	Generally, many terms used in the Bill are quite complicated and confusing (egg prescribed ERA project, significant project, registered suitable operator, amalgamated authorities etc). It is suggested that simpler terminology be considered so that the community (in particular) will understand the legislation. Considering the evolution of the legislation,

Section Name or number*	Comment	Proposed solution
		there has been so many changes that operators will struggle with the terminology of this legislation. Local Governments deal with a large proportion of small to medium businesses and as such the terminology and changes can lead to confusion, frustration and distrust which results in greater administration by Local Government. Clear communication from DERM to all sectors of the community will assist in setting this clear and reduce the expected significant administrative burden for Local Government.