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Infrastructure, Planning and Natural Resources Committee

From: Phil Heywood
Sent: Tuesday, 12 January 2016 3:39 PM
To: Infrastructure, Planning and Natural Resources Committee
Subject: QUEENSLAND 2015 PLANNING BILL, KURILPA FUTURES CAMPAIGN GROUP SUBMISSION T0 PARLIAMENTARY INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE.
Attachments: 2015F PLANNING BILL SUBMISSION JAN, 2016.docx

Honourable Members,

Thank you for providing this opportunity to submit comments on this important and significant legislation, which will do much to decide the direction of development, conservation and community life throughout the state over coming decades.

On behalf of the Kurilpa Futures Campaign Group, we should like to express our appreciation of this opportunity to make our views known directly to you on these matters . Should you wish clarify any of the content of this submission, we should be happy to nominate a suitable person to attend and answer questions.

Finally, we wish the committee every success in this important work.

Your sincerely,

Philip Heywood,
Spokesperson, Kurilpa Futures Campaign Group.

SUBMISSION T0 PARLIAMENTARY INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE
CONCERNING QUEENSLAND 2015 PLANNING BILL
FROM KURILPA FUTURES CAMPAIGN GROUP

Prepared by Phil Heywood, LFPIA, PPRAPI (Qld.)

INTRODUCTION:
We congratulate the Queensland Government for the more balanced objectives, processes and requirements of the *2015 Planning Bill,* compared with those contained within Mr Nicholls' Private Member's *Planning for Prosperity Bill*. The latter would, by contrast, subordinate long term qualities of life and environment throughout the state to the promotion of speculative and short-term investment interests. We welcome the preferable commitment of the Government Bill to ecological sustainability, defined in Section 3, Purposes of the Act, to include natural systems, as well as economic development and social well being. Equally welcome are the requirements for assessment managers to explain the reasons for their planning decisions, and the explicit commitment to system transparency and public consultation.

However, a number of further changes are required to fully secure the wide and enduring improvements needed to safeguard the long-term qualities of life and environment of Queensland citizens. These matters fall into the following six categories, which constitute the remainder of this submission:

Development Assessment & Categories
Consultation Processes
Plan Making Processes
Decision taking Processes
Review and Appeal Processes
Conclusions

For ease of reference, recommended changes to the bill are listed in bold type at the end of each of these sections on pages 3, 5, 6, 7, 8 and 9.

DEVELOPMENT ASSESSMENT & CATEGORIES

Major deficiencies need to be rectified in the existing and proposed development and assessment categories and criteria. As they stand, these conflict with the Government's parallel commitment to open public consultation and transparency. The current "Code Assessable" category (which includes the great majority of all applications) does not require public notification of neighbours and other interested parties and excludes rights of objection or appeal. By itself, this mechanism subordinates citizen's rights to be informed and consulted to the desire for certainty of approval on the part of developers and other applicants. It is also compounded by the Department's related presumption of approval for code assessable applications. These administrative devices also preclude the

widely accepted decision making virtues of open scrutiny and dialogue, and abets much poor and perfunctory current design.

Four principles should be incorporated in the new act to rectify these failings:

i. Current classifications into "Self Assessable, "Code Assessable, "Impact Assessable" and "Prohibited " categories with their complex and over detailed provisions for categorisation and exemption and should be replaced by the simple designations of "Exempt", "Assessable" and "Prohibited".

ii. All except "Exempt" applications should entail public notification and rights of objection. This is socially and logically necessary in a world of constant social and technological innovation, where no advance statement of intended outcomes can securely anticipate all possible future agendas or technologies.

iii. The "*presumption in favour of development*", clearly acknowledged by the departmental representative on page 6 of the *Transcript of Proceedings of the November 30 Public Briefing* of the Committee, should be abandoned. It flows from a flawed assumption of certain knowledge of future conditions by original plan makers. Nevertheless, it is still retained in the Bill despite the opposition of a large majority of public submissions. The full implications are explained in the Department's "Snapshot" of September 2015 which states that in the cases of Standard/Code Assessment:
" The assessor *must* approve the development application to the extent it complies with assessment benchmarks *or if compliance can be achieved by imposing development conditions*" (Page 9, "Proposed Categories of Development" table, italics added). Development Assessment Officers will thus be put in the position of having to try to re-shape proposals to assist their success. Little would be changed from the current, widely criticized approach except that the most dubious forms of selective pre-lodgment negotiations would now be written into the wording of the new Planning Act.

These exemptions and presumptions need to be removed, so that they will no longer act as licenses for over-development and bad development, subordinating local concerns and conditions, to long term interpretations of the short-term interests of property investment. Instead, all assessable development should be liable to open minded assessment and rules should restrict the matters for discussion at pre lodgement meetings to clarifications of proposals and requirements to safeguard long-term community and environmental interests.

iv. The much-cited justifications of flexible "Performance Based Planning" need to be questioned and abandoned in favour of evidence based assessment. In aiming to anticipate decisions concerning future performance of all possible proposals, current provisions have generated Local and Neighbourhood Plans dominated by tables occupying dozens of pages of doubtless well-intentioned standard

outcomes of how new development should perform. Nevertheless, under "Impact Assessable" rules, the "acceptable solutions" need not be adopted and are often accompanied by provisions for developers to gain relaxations for large sites, although these might actually require more rigorous control, because of their inherently greater and more widespread impact and significance.

Performance Based Planning is thus taking the planning system away from good objective based design and towards formulaic reliance on standard solutions and the use of flowery copy writing on the part of applicants and their consultants to obtain relaxations and extensions. It should be replaced by a return to the reliance on clearly stated objectives and their accompanying numerical indicators. Simple statements of the objectives and requirements of zones, accompanied by appropriate use of precise numerical Gross Floor Areas (GFAs) and Plot Ratios will be more transparent and effective and provide more confidence and certainty for communities than the current contentions of what is termed Performance Based Planning.

RECOMMENDED CHANGES FOR DEVELOPMENT ASSESSMENT & CATEGORIES

A1. Development Assessment categories should be reduced to "Exempt", "Assessable" and "Prohibited", with both assessable and prohibited categories requiring pubic notification and conferring rights of objection.

A2. Exempt developments should be limited to minor proposals of less than 10% existing volume, which would be located behind the current building line.

A3. The "Presumption in favour approval" for all assessable development should be removed. All applications should be assessed on their merits in the light of the local plan, individual and group submissions and wider district, city and regional plans

CONSULTATION PROCESSES

The Government's stated principles of transparency and consultation require three further reforms of development assessment and plan preparation. First, all assessable development applications should require evidence of prior consultation with neighhbours and local communities, since this is the most effective way to minimise the unnecessary conflicts arising from misinformation, missed opportunities for creative compromise and misunderstanding. The following benefits would result. Local people would have opportunities to voice direct to the developers and other applicants their highly legitimate and relevant interests and concerns. In return, the proponents would have opportunities to notify local residents of the benefits they see accruing in terms of "trickle down" effects and increased range of provisions and facilities to local communities.

Proponents would also benefit from opportunities to visualize and improve their proposed schemes from the standpoint of the existing communities with whom they would be negotiating, conferring the added advantage of helping to forestall avoidable errors of unfamiliarity and distance, which can often alienate communities and result in unnecessary conflict and environmental damage.

Second, inclusive responsive and deliberative decision taking require that when a new plan is to be prepared, current residents and users should not only be notified but should also be provided with opportunities to participate in collaborative community workshops or forums. Staffed by relevant professional personnel, these workshops should respond to community questions; elicit local concerns and aspirations; and identify and record major objectives and priorities. In setting plan directions, opportunities should be provided for open discussion and recording of community goals. Adopted plans should take account of these objectives and priorities and should explain reasons where proposals diverge from these original intentions.

Third, more flexible organisation of roles and locations for official plan making will be required to achieve this more interactive and deliberative approach. While decision points should remain within the hands of local councils of large urban areas, information points should move closer to their action points. This can be achieved by applying shop front methods of plan consultation and preparation, involving informal as well as official meetings with local groups and individuals during plan preparation.

In all three of these reforms, care is needed to achieve contact with major age social and language groups. Communicating with children and young people in particular requires both different and similar approaches to engagement with adults. Consultations with elderly persons should likewise be given special consideration. Use should be also be made of dedicated pages on councils' websites to keep interested parties informed of the process of this community dialogue, and to allow them to add their own contributions in the course of the plan's development.

Organisation of continuing participation at different scales

Appropriate forms of consultation and participation need to be integrated at each level of governance for which the State has responsibilties. At *state level* consideration needs to be given to a State Planning Advisory Committee (SPAC) with membership drawn from peak, professional and academic bodies in the social, environmental and economic fields. *Local* governments' strategic and community planning, should both draw together staff from different departments and also establish consultative community bodies with rights of access to dialogue, commentary and response.

District plans with 15-year time horizons need to be brought into alignment with these city wide strategic community plans, indicating intended future urban structure and infrastructure and extending their consultative methods to more local participation.

Local plans need to be prepared with the direct involvement of local communities outlined above, with Community Forums & Panels established to hold open and publicised meetings on both city wide and local objectives and priorities, with rights of access to information, dialogue, review and response.

In these ways planning can be improved as a place-making and community-building activity. Broad brush and participatory strategic plans can be linked to more explicitly spatial district planning schemes. Overall intentions and general land use designations can guide the detailed zoning information of specific local plans which should also indicate sites for future social and physical facilities and infrastructure.

Appeal rights and conditions. To ensure that local knowledge and concerns can play their optimal role in influencing new development, the threat of crippling court costs need to be totally removed for appellants to the Planning and Environment Court. While the Government's proposed legislation is to be praised for limiting this threat to "frivolous and vexatious " cases, objectors should *never* have to face crippling costs amounting to personal bankruptcy, at the whim of non-expert judges. These matters are discussed in more detail in a subsequent section on Review and Appeal Processes.

RECOMMENDED CHANGES FOR CONSULTATION & PARTICIPATION

C 1. All development applications should be accompanied by statements of prior consultations conducted with neighbours and other interested parties, and their outcomes.

C 2.
Preparations of statutory city and local plans should be required to include and describe the outcomes of prior, initial and continuing phases of community consultation which should include

- **a. Two or more well advertised and systematically recorded open community meetings with opportunities for two-way exchange of information concerning facts, values, perceived problems and objectives for the study area.**
- **b. A program of targeted consultations with specified groups including but not limited to**
  - **a. Business and commercial groups**
  - **b. Community and faith based organisations**
  - **c. Young people and school children**
  - **d. Aged and disability groups**
  - **e. Ethnic, indigenous and language groups**
  - **f. Sporting organisations**
- **c. Submitted Plans should be required to record methods adopted to consult major interest and age/sex groups in the area of review and the outcomes achieved.**

C.3 Councils should be required to maintain open Internet pages of ongoing opportunities, records and outcomes from the consultation processes described in C.1 & C.2.

C.4. At State, Regional and Local levels planning systems should be required to include appointment of Advisory Committees. The *State Planning Advisory Committee (SPAC)* should be required to draw membership from appropriate peak community, professional, business and academic bodies. *Regional Planning & Coordination Committees (RPACCs)* should include a similar range at the regional scale. *Council Planning Advisory Committees (CPACs)* should combine representatives of significant interests and concerned bodies in their areas with senior members drawn from relevant Council departments. *Local Planning Advisory Committees (LPACS)* should be established to collaborate in the participation process, where local plans are envisaged. Nominations should be invited for members to reflect a wide range of local interests, activities and organisations.

PLAN MAKING PROCESSES

Urban, district and local plans should be consistent not only with one another and with the State Planning Policies and Regional Plans; they should also be linked to well articulated statements of local councils' own overall future intentions and priorities and the outcomes of their community consultation. Because land use designations do, or should, accommodate activities undertaken in response to a wide range of socially valid objectives, city and district plans should be required to incorporate objectives and provide appropriate locations for a full range of community activities, including shelter, work, movement, play, community life, culture & heritage, and governance. A further merit of this approach is that it requires thorough and continuing collaboration amongst a number of different sections in state and local governments, thereby improving the quality of their decision-making.

In addition, these former Community Plans contain simpler and more effective arrangements for community consultation than those stipulated in successive Planning Acts. These could be used as models for both councils' internal consultation and for dialogue with their wider communities. Such planning instruments should demonstrate how progress towards shared goals can be achieved through collaboration between departments in specified actions, and should indicate opportunities for continuing community input.

Good examples of the virtues of such plans are the succinct Community Plans produced in the period 2009-12, in accord with 2009 Local Government Act by many local governments, including the Sunshine Coast, Moreton Bay and the Redland Bay Regions and Toowoomba City Council. These plans outline the processes and outcomes of consultation and the integrated priorities and proposals of their Councils. They are simply expressed, well presented, generously illustrated and seldom exceed 50 -60 pages. The policy vacuum resulting from the 2012 withdrawal of these requirements may well be

contributing to the alarming tendency of local planning authorities to consign decisions about strategic directions and intensity of development to self professed market forces, thus abandoning a key role of democratically elected governments. Requiring the strategic sections of city and district plans to meet these requirements could resolve this dangerous deficiency.

Local plans, sitting within this context, should also be based on systematic consultation to identify local community objectives and how these are to be integrated with city wide goals, accompanied by Infrastructure schedules for both social and physical services.

Such plans are only as good as the research on facts and values on which they are based. There is an immediate need to adopt the earlier evidence-based planning of Queensland Planning Schemes, with all policies required to be justified by relevant analyses, most easily situated in a supporting section (often termed "Part B"). This requirement would strongly support the Government's headline requirement for Development Assessment decisions to be supported by explanations.

Planning is a values-driven activity, validated and dimensioned by reference to measurable physical conditions summarised in the well-used phrase "evidence – based". Local Government Plans need to acknowledge this values driven, evidence-based reality by producing both initial statements of explicit objectives and consultation, and an explanation in "Part B" of the related sustainable activities and resultant proposed land uses.

Regular review is essential to respond to the rapid and accelerating pace of change of modern society in the fields of knowledge, technology and environmental conditions. Plans should therefore be reviewed every 5 years, requiring a cyclical planning process which engages the planning staff in continuing dialogue with community and professional partners, with the factual "Part B" being constantly and routinely updated as these dialogues continue.

RECOMMENDED CHANGES TO PLAN MAKING PROCESSES

P1. Local Government Planning Schemes should be required to include a strategic planning section, stating intentions concerning strategic directions for population and housing policy; economic development; transport projections and provisions; environmental systems and conservation; and timing and location of human service provisions for health, education, culture and community activities.

P2. Local Plans should be required to include proposals and site designations for necessary social and physical infrastructure provisions for related development proposals.

P3. All plans submitted to the Minister for official adoption should contain a specified "Part B" containing the evidence for decisions affecting each proposed designation or policy.

P4 All adopted and gazetted plans should be reviewed at intervals of not less than 5 years, preferably as part of processes of continuous monitoring, consultation and review.

DECISION TAKING PROCESSES

The centralised experiment of the Single State Planning Policy has resulted in a bias against flexibility, expertise, precision and continuity of review, and the Specific ***State Planning Policies*** need to be reinstated to replace the monolithic single State Planning Policy with its 5 parts, 16 aspects and 89 pages, because it is both over- centralised and biased towards the unquestioning promotion of economic development, irrespective of adequate analysis of likely social and environmental impacts. Government is to be congratulated in seeming to have quietly omitted this failed experiment from the current Bill, which repeatedly refers to "State Planning Policies" in the plural. This reform should also encourage much needed interdepartmental liaison and community collaboration with interest groups and peak bodies representing social, environmental, economic, health, recreational and cultural concerns.

Similarly, the experiment of the ***Single Assessment Referral Agency (SARA),*** needs to be abandoned. It has not proved popular with former referral agencies including environmental, traffic and education departments. It has caused alarm among peak bodies concerned with these departments (including for instance both QCC and EDO) and it has not resulted in any appreciable reduction in processing time. The former ***Integrated Development Assessment System (IDAS)*** worked well and could provide the appropriate model for restoration of the original system of parallel and integrated consultation.

RECOMMENDATIONS FOR DECISION TAKING PROCESSS

D1. Specific, topic based State Planning Policies should be negotiated with relevant Government Departments and Community Groups and reinstated in place of the Single State Planning Policy

D2. The State Assessment Referral Agency (SARA) should be disbanded and replaced by the former collaborative and consultative Integrated Development Assessment System (IDAS)

D3. Local Plans should be required to include proposals and site designations for necessary social and physical infrastructure provisions for related development proposals.

REVIEW AND APPEAL PROCESSES

The Planning & Environment Court. As the main body of appeal and review, the Planning & Environment Court needs radical revision. It is expensive,

intimidating and adversarial and lacks both planning or environmental expertise or adequate professional resourcing. The new *Planning and Development (Planning Court) Bill* of 2015 should be re-drafted to take advantage of this overdue opportunity to reform, democratise and de-monetise the state's appellate system.

Currently, appellants may become liable to life-crippling litigation costs, constituting one of the most damaging failings of the present system. The new Bill is to be commended for discouraging the award of costs against appellants, but it should remove them entirely, closing the loophole whereby non-expert criminal law judges may deem an objection "frivolous or vexatious" and award costs against appelamnts. Unless this threat is removed entirely, it is certain to continue to deter well-justified community objectors from challenging well-resourced developer applicants and their costly consultants.

***Available alternative models*.** This fundamental failing is only one part of a system that needs far more radical review. Adversarial, lucrative and legalistic processes should be replaced by more responsive and negotiative methods of conflict resolution and these new proposals need testing and strengthening in consultation with peak organisations representing environmental, community and business interests and expertise.

Models can be drawn from elsewhere in Australia (Victoria and South Australia) and from overseas. In the UK, for instance, professionally qualified and independent Planning Inspectors staff a cost free and widely respected appeals system, while in Oregon (USA) the Land Use Board of Appeals [LUBA] consists of a three-member Board serving four-year terms. The Oregon Senate must confirm appointees, who must be members of the Oregon State Bar. Both Oregon's Board members and UK's Planning Inspectors work on a problem solving and cost free basis, and resolve disputes within short time frames, using informal procedures. Introduction of such a system would create far more opportunities for community participation than are envisaged in the proposals of the current Planning Court Bill.

RECOMMENDED CHANGES TO APPEAL SYSTEMS

R. 1. Immediate Review of the operation of *the Planning & Environment Court* should be instigated to ensure that appellants could never incur liability for the legal costs of proponents or Council, irrespective of legal judgments as to their merit.

R.2 *The Planning Appeals system* should be reviewed to abandon current adversarial methods of investigation. They should be replaced by ones seeking to establish relevant facts and values.

R3. *The Planning & Environmental Court Act should* be deferred pending a systematic inquiry into the relative merits of alternative models of appellate review and conflict resolution, including the South Australian

and Victorian systems of tribunals, the Oregon Land Use Board of Appeals in the USA and the UK system of Planning Inspectors.

CONCLUSIONS

The Planning Bill should be amended to abandon the presumption of development assessment approval in pursuit of providing certainty for developers years in advance of potential applications. It should emphasise instead the necessary roles of urban and regional planning to integrate diverse human activities in specific spaces, to create and maintain sustainable settlements.

These processes should also assist in developing consultation and collaboration with different departments of government responsible for:

i. such *activities* as health, housing, transport, environment, education , heritage and culture
ii. other *levels* of governance – commonwealth, state, regional, local community and commercial
iii. community *participation*, which should be statutorily extended beyond invitations to lodge written submissions or attend stakeholder meetings, to ensuring maximum opportunities for contributions by all citizens and groups willing to devote time and thought to developing objectives and options for their neighbourhoods and cities.