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Infrastructure, Planning and Natural Resources Committee

From: Park It <parkittoowong@gmail.com>
Sent: Monday, 18 January 2016 4:48 PM
To: Infrastructure, Planning and Natural Resources Committee
Subject: Submission for Infrastructure, Planning and Natural Resources Committee from Park It Community Group

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18 January 2016
Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
Brisbane Qld 4000
Sent via email: ipnrc@parliament.qld.gov.au

Dear Mr Chair and Committee Members

We welcome the opportunity to make submissions on the proposed planning frameworks tabled in Parliament by the Government and the Private Member Tim Nicholls.

This submission is made on behalf of Park It, a community resident actions groups. Whose purpose is to have the old ABC Site at Toowong turned into a riverside public park as was promised by the local Councillor.

As a resident community group involved in planning issues we wish to make the following points about the proposed planning legislation frameworks. We believe that the three planning bills tabled by the government are superior to the private member planning bills tabled by Tim Nicholls MP. The LNP sponsored legislation had very limited community consultation and seems to have been drafted to benefit the development industry at the cost of the transparency and good governance that the community expects.

It makes no mention of the measures required to deal with climate change nor does it seek to adequately protect our environment and heritage. The government legislation at least ensures that Ecologically Sustainable Development (ESD) is a central purpose of planning legislation. The Private Members Bill (the Planning Act) does not provide adequately for ESD to be a key purpose of this particular legislation.

The Private Member legislation should not be considered by Parliament because it introduces a planning process which removes much of the contents of the Planning Act to supporting instruments. These instruments are not available for public view and so it is impossible to fully judge the effect of these proposed bills.

The Government Bills have also removed much of the content to supporting instruments. These supporting documents are still out for public consultation and so make it difficult to judge the effect of this legislation as tabled. There are 12 additional documents so far to be considered in understanding the planning legislation. The draft Planning Regulations alone consists of 378 pages. This creates uncertainty for people affected by planning decisions as to what the law is, where to look for it, and when it might be changed.

The piecemeal release of the supporting documentation undermines the capacity to take a systemic view of the impacts of the legislation and creates uncertainty that is as unnecessary as it is dangerous. This legislation and its increased complexity creates significant impacts for local governments in developing and implementing local planning schemes rather than providing a scheme that avoids the so-called complexities of both *IPA* (1997) and *SPA* (2009) as it was promised.

The key driver and stated promise for this review of the Government Planning legislation was to provide a systemic review that would be courageous in its execution in order to systemically improve outcomes and benefits for all Queenslanders. The failure to deliver a more accessible, transparent and legible bill for the people of Queensland to protect their rights and provide certainty over planning and development issues is central to the criticism that we have of this legislation.

The whole of the Legislation needs to be comprehensively revised and redrafted rather than this hastily prepared version that has been created under the same government officers who prepared the LNP legislation. The Environmental Defenders Office (EDO) Scorecard clearly sets out for the public that the proposed legislation makes the situation in all counts worse than under the current legislation already in place. This is both disappointing and unacceptable.

Transparency and *legibility* should be two of the principles of the legislation. On this fundamental basis the legislation has failed to deliver to the people of the State. In our assessment of the legislation a trained Barrister and experienced Town Planner found the language turgid and littered with jargon. The layout and language used are poorly executed and difficult to understand. In short it is not capable of being understood by the ordinary person with the use of plain English.

The government's Planning and Environment Court bill is preferred to the Private Member's bill governing the operation of the Planning and Environment Court. The government bill allows for costs rules which do not follow the outcome of the matter and allow for very restricted circumstances if costs are awarded against appellants when they take legal action. This facilitates greater involvement by resident community groups in important planning and development issues in the community – allowing for a higher level of participation in those issues which impact on their quality of life.

There is deep disquiet with the whole community consultation process particularly when the community was purposefully excluded from meaningful participation in the development of these pieces of legislation. The Department of Infrastructure, Local Government and Planning (DILGP) claimed in their public presentation to your committee (30th November 2016) that the consultation process for these bills encompassed a period of over two years.

The community was only made aware in March 2015, via the web, that there were wholesale changes to be made to planning legislation. There has been at least 15 to 18 months' difference between the time the community had to become acquainted with the more detailed sections of the legislation and the time the development industry, and associated professionals, and local government organisations have been allowed. Only two representatives of Brisbane Residents United were permitted to attend the last major planning information/participation event. This is inequitable and undemocratic.

The 'Meet the Planner' events were designed to restrict any exchange of useful information between the community and the Department and any cross-exchange of information between the community participants in these events. One of the consultation events supposedly organised by DILGP was in fact organised by the Environmental Defenders Office.

We believe that the drip-feeding of the whole legislative package means that the community cannot adequately assess the impact of the proposed legislative changes. Additionally it is unacceptable that the government has broken with consultation protocol by including the Christmas vacation period in the overall time of consultation.

The consultation process was neither accountable nor transparent. Submissions to the DILGP on the proposed planning legislation have not been made public. This is contrary to normal public administration processes. Without knowing the full range of issues and people's expectation, it is not possible to make an adequate submission to the Parliamentary Committee. In contrast submission processes to issues such as changes to electoral commission boundaries have been made public.

This lack of accountability and transparency is reflected in the legislation. Particular attention should be paid to the following sections of the Government's legislation. Development is becoming increasingly code assessable. About 90% of applications in the Brisbane City Council local authority area will be code assessable in the future. The idea that code assessable development need not be assessed in accordance with the purpose of the Act is therefore disrespectful to the community and makes a mockery of the legal process given that one of the central purposes of the Act is ESD. Section 45(4)

which states that code assessable development need not be assessed in accordance with the purpose of the Act should be removed. By including this provision the purpose of the Planning Bill becomes irrelevant for a significant number of developments, and our environment suffers.

The same criticisms can be applied to section (60(*2*)(*b*) and it must be removed. This section allows approval of code assessable development without the development proposal complying with any of the assessment benchmarks. It is indefensible that tax-payers funds have been used on the development, drafting and processing of this legislation which undermines their rights to such a degree. The implication of this piece of legislation being enacted is that it enables any development application to be assessed as code assessable at the discretion of the assessing officer. Where is the assurance of quality, accountable, transparent decision making if decision makers can simply approve an application without compliance with the imposed assessment criteria

Section 48 of the Planning Bill which provides discretion as to who can be an assessment manager should be removed or redrafted. It should ensure that an assessment manager can only be an appropriately qualified, objective person with no conflict of interest with a proposed project, with measures to address ramifications should a conflict of interest arise. The quality of planning decisions may easily be eroded by providing such a significant discretion as to allow the proponent to choose who will assess their application, with such little guidance as to the qualifications necessary and no recourse should a conflict of interest arise.

This provision encourages the appointment of private development assessment managers and in concert with the extreme level of discretion that section 46 provides to allow exemption certificates it is highly concerning. This poses an unacceptable risk that Queensland will allow the mistakes seen in Sydney such as seven people buying 1-bedroom units only to find that the units have been completed as bedsits; a number of deaths of Asian students through fires occurring in units that had been illegally altered; a unit with a toilet pedestal next to the sink and no internal walls being described as the next best thing for affordable mini units.

Section 46 of the Planning Bill which provides the discretion to provide exemption certificates from development assessment should be deleted. Significant concerns have been raised with the loose level of discretion that this section provides to allow exemption certificates. This is not in line with accountability, transparency and quality development assessment and is open to abuse under bad governance.

Development decisions relating to height, width and mass, have been allowed to override local planning codes impacting on the privacy and amenity of local residents and destroying the local character. The overriding of local planning codes is one issue which has engendered a great deal of distrust between local residents and their elected representatives. This issue is not going to go away. The situation will only become worse once the people realise that the ability to make behind the scenes decisions about developments has been included and is enshrined in the government legislation.

To strengthen the role of codes in the land use planning and development system, performance indicators should be included in the planning frameworks to help guide and assess the effectiveness of planning decisions. This will assist with the transition to urban areas to address climate change and protect biodiversity. To truly address climate change issues the Bill should also incorporate measures for allowing urban spaces and residential areas to foster adaptation to climate change.

For this reason, the planning bill should incorporate the following principles:

- ***The Act needs to define terms such as Amenity and Development Impact so that it is clear what the act seeks to promote and maintain or not support and not maintain.***

- ***The Act needs to strike the correct balance between making development and development assessment quick and effective and the rights of other effected parties to be heard and to appeal.***

We support the requirement for assessment managers to provide reasons for their decision making but this should also include a requirement for explaining how the advice of referral agencies has or has not been integrated and reasons why it hasn't. This provides the necessary check on balance on the power held by State Assessment Referral Agency (SARA).

The Bill should incorporate a legislative requirement for the SARA to comply with the advice of specialist referral and technical advisory agencies on matters over which they have jurisdiction. It is frightening that SARA has a monopoly on deciding certain development applications. SARA does not have the professional resources, or expertise to be able to adequately assess in such sensitive areas as coastal zones, cultural heritage or vulnerable vegetation communities. SARA has recently made a decision to allow development in the Memorial Park at Toowong whereas the advice of the Department of Environment and Heritage Protection was that no development should be allowed as a tree from Lone Pine will be destroyed as part of the development. The Petrie Fig Tree near Customs House is also under threat as is the full heritage value of the site itself. These examples highlight the lack of rigor and the imparting risks regarding our invaluable heritage.

We have read and endorse the submission (Attachment One and Two) prepared by Brisbane Residents United and agree and support them. We have also added Attachment Four about our issue.

We have read and endorse the submission (Attachment Three) prepared by the Environmental Defender's Office, Queensland, particularly the proposal that the Private Member's Bills should not be passed. We support EDO's comment that the legislative framework creates uncertainty about what the legislation is, where to look for it and when it might be changed. A copy is attached.

However, our concerns about the transparency of the legislation are of such a serious nature, that consideration should be given to organising an independent out-of-State review of the Government's planning bills to ensure future planning legislation is transparent, ethical and democratic.

Planning legislation should ensure that the cumulative effects of developments in an area are considered and the required infrastructure provided. Real community input should be sort and fully implemented not just given lip service. Surely we should get a say in what we are asked to pay for. Consider the proposed expenditure on Kingsford Smith Drive which has been proposed as a result of the need to service the many developments to the area. This is a very clear example of public funding for private benefit.

If we are truly a forward looking state that wants to embrace the future then the action to implement a planning act that has been independently reviewed as being retrograde is highly damaging to the state. It returns us to dark days of planning and development corruption in Queensland and is contrary to the promises that have been made to its people.

We request the opportunity to appear before the Committee in their hearing into this inquiry.

Yours sincerely

Elizabeth Handley

Chairman
Park It Community Group

Attachment One
PO Box 3898
QLD 4101
Deputy Premier
deputy.premier@ministerial.qld.gov.au
10 August 2015

Dear Deputy Premier and Minister for Infrastructure and Planning,

RE: Brisbane Residents United Response to *Better Planning for Queensland - Next Steps in Planning Reform* directions paper May 2015

Brisbane Residents United (BRU) thanks you for the opportunity to provide feedback on the Queensland Government's *Next steps in planning reform* directions paper, which will inform the draft Planning Bill. We welcome your commitment to deliver a new Planning Act and believe that community support is critical for real planning reform to succeed.

BRU is Brisbane's peak body for community groups whose purpose is to:

- Represent Brisbane and surrounding district residents and provide them with a united voice (and through which local resident groups can have a voice) to Council, State and Federal Governments on matters pertaining to urban planning and development.

- Act as a resource centre, facilitating information sharing across established and startup local resident associations.

To have Australia's best planning system the State Government must examine its role in planning. BRU agree that good planning should be the means to improve the liveability, sustainability and prosperity of our state. It should not benefit one group at the cost of another and should protect and provide for the most vulnerable members of our society. It should also be transparent and free from corruption or the possibility of corruption.

Performance based planning, if properly implemented, should result in an excellent standard of development. However, over the years, inadequate planning schemes and poor decision making has led to a development free-for-all at the expense of community (social, health and wellbeing), environmental and even economic outcomes.

It is worth noting that BRU see the Directions Paper as a first step in the Queensland Government's planning reform agenda, and consider its purpose is primarily to prompt discussion. Therefore we consider that the critical next step – prior to the preparation of any Planning Bill – is for the community to consider a clear set of proposals and options so that focussed feedback can be generated. BRU further considers the previous government's proposed planning legislation to have been deficient with respect to transparency and engagement, and does not support what was a clear anti-community and anti-environment position.

In preparing this response, BRU has consulted with community groups, residents and organisations. A summary of key concerns and recommendations is provided over page. BRU also supports the submission made by the Environmental Defenders Office.

Sincerely
Erin Evans
per Brisbane Residents United

KEY RECOMMENDATIONS

- Eliminate developer donations to political parties to lessen their influence over planning and development decision-making.

- Establish a more cost effective and participatory tribunal-based system, such as the Victorian Civil and Administrative Tribunal, to resolve development issues and where possible move away from expensive court-based processes.

- Participation in planning needs to include the rights of affected third parties to be notified and make submissions concerning all significant planning applications. "Code assessable" categories should be contracted back to apply only to those applications for development behind the current building line, and within the existing height and bulk restrictions for that zone.

- Apply 'call-in powers' consistently, recognising that not all communities are as actively engaged but that they all need planning and development for healthy, sustainable communities.

- Factor in public transport, state schools, and other essential services into all planning and development decisions.

- Reinstate the Department of Environment and Heritage Protection (EHP) concurrence powers to deliver greater advocacy for heritage matters and environmental sustainability.

- Recognise the natural environment plays a critical role in delivering community health and wellbeing and its protection and expansion is central to planning and development decisions.

- Everyday community members should be given access to expert advice and sufficient time to consider, contribute to, assess and make recommendations on planning and development applications in an open and transparent way.

- Apply the principle of 'go-up-not-out' fairly across communities, using a deliberative democracy model, sustainable design and supported by affordable, frequent public transport.

- Reinstate provisions for inclusive zoning in housing areas to make it possible to provide for specified, dispersed proportions of affordable housing.

- Define amenity as a foundation principle and what reasonable expectations of residents should be. All planning schemes that are formulated should be forced by legislation to address the term Amenity, Amenity Outcomes, and resident's rights regarding Reasonable Expectations.

- Consistency, coherence and integration of planning instruments. All planning should go through the same levels of community scrutiny.

- Removal of the proposed power to exempt development proposals for assessment through discretionary decision (part 9) as it creates a dangerous loophole.

PRINCIPLES FOR GOOD PLANNING

Good planning should be governed by principles that deliver certainty and encourage community participation, which promote simplicity, independent review, and accountability.

- The well-being of the whole community, the environment and future generations across regional, rural and urban Queensland.

- Effective and genuine public participation in strategic planning and development decisions.

- An open, accessible, transparent, accountable, corruption-free planning system.

- The integration of land use planning with the provision of infrastructure and the conservation of our natural, built and cultural environment.

- Objective, evidence-based assessment of strategic planning and development proposals.

- Inclusive and enforceable planning.

- Clear and straightforward implementation and equitable review and enforcement.

FULL RESPONSE

We welcome the Queensland Government's commitment to delivering a better planning system that recognises climate change and which enables responsible development while ensuring prosperity, sustainability and liveability for now and into the future. We also believe that Queensland's planning system should support effective and genuine public participation in planning, whilst providing for efficient and consistent decision making that instils investment and community confidence.

We welcome the commitment that during the development and implementation of this new Planning Bill, the Queensland Government will undertake thorough consultation and engagement with stakeholders and the broader community.

BRU agree that an important function of the planning system is to provide straightforward and clear direction for communities, so that the residents understand what the requirements for development are in their neighbourhoods. The community should be assured that inappropriate levels of development will not adversely affect their property values. For the majority of the population, their home will be the largest investment they ever make in their lives and anything that adversely affects its value has a major effect on them as owners and their potential future prosperity.

Just as importantly, the planning system should provide certainty to industry about

development outcomes to instil investment confidence. The larger developers that can afford the process that is involved in changing the density of a site and are often prepared to pay extra for that site with the expectation that with the necessary planning changes their investment will pay off. Smaller and medium sized development companies that can't afford that type are risk are then disadvantaged when it comes to buying suitable sites. This leads to a distortion of the market and a subsequent increase in the price of land, which eventually leads to a decrease in housing affordability.

Performance based planning, if properly implemented, should result in an excellent standard of development. However, over the last decade we have seen the result of poor planning schemes - such as the Brisbane City Council City Plan and through the Code Assessment process - that have opened the way to a developer's free-for-all and caused disastrous short term and long term social and environmental outcomes. (Bull & Kirk, Weekend Australian 25-6 April 2015).

1 Better Planning and Development Outcomes

Based on BRU engagement and experience, people have lost confidence in the transparency and impartiality of the planning system and its administration of planning schemes to deliver fair outcomes that are sensitive, designed well and achieve new development at appropriate densities. For example, Brisbane City Council's (BCC) City Plan is currently seen as an enabler for development that discourages community benefit. It has been suggested that developers apply the rule of 'seek 150% and get 125%' beyond what is recommended in the City Plan. This approach will only ever deliver a net loss to the local community.

Local residents most impacted by these decisions deserve to have decision-makers protect their interests by, at a minimum, adhering to their own planning schemes. In order to achieve this, individual planners must articulate in more detail and with greater specificity Performance Solutions because, as they stand, they are far too broad and subject to interpretation.

The subjectivity of performance based planning schemes offer developers enormous scope without offering security to residents. The poor assessment of code assessable development applications has led to inappropriate developments that, had they been opened to public scrutiny and advertised to neighbours. An example would be the development dubbed the Great Wall of Fortitude Valley, where council helped developers to deliver an acceptable solution that left eight adjacent neighbours in 24 hour darkness (Brisbane Times 18/3/2015)

2 Real Community Engagement and Participation

BRU consider community engagement and participation critical to the planning and development reform agenda and at a minimum support the retention of minimum consulting periods, public notification of proposed local planning schemes and timeframes for consideration of and authority to prepare submissions. However, community engagement should be extended to allow participation on matters currently excluded through other legislative mechanisms such as the Economic Development Act.

BRU recommends implementing a new statutory guideline that introduces community engagement standards for local government in the plan-making process, in consultation with councils and communities. This should also include the ongoing funding of community organisations such as the Environmental Defenders Office to assist the community with appeals and understanding the implications of changes to legislation and planning schemes.

BRU is very concerned at the Queensland Government's proposal to exempt development proposals from assessment. Already, development and infrastructure decisions are made that are contrary to the protection of the natural environment, community parkland and green spaces – all critical components of a healthy society. Reduced public scrutiny will further decrease the likelihood of holistic decision-making. Without exception, no development should be exempt from state and local planning laws.

Participation in planning needs to include the rights of affected third parties to be notified and make submissions concerning all significant planning applications. "Code assessable"

categories should be contracted back to apply only to those applications for development behind the current building line, and within the existing height and bulk restrictions for that zone.

Plan preparation should require that all residents and users be notified of the intention and be invited to attend one or more community workshops or forums, staffed by relevant professional personnel, to respond to community questions, clarify local concerns and aspirations, and identify major objectives and priorities.

BRU supports the intention to restore the 'own costs' rules for planning appeals. The obstacles for community appellants are already significant, and risks of costs orders are a strong deterrent against community involvement in planning decision-making. BRU also advocate that a more cost effective and participatory tribunal-based system be established, such as the Victorian Civil and Administrative Tribunal, to resolve development issues and where possible move away from expensive court-based processes.

Fast tracking of development assessment processes must not be at the cost of meaningful community engagement and proper environmental assessment. This should be implemented through providing clear criteria and community submission, appeal and enforcement provisions through all Queensland planning instruments, including in the SDPWO Act, as mentioned above, the Regional Planning Interests Act 2014 (Qld) and the Integrated Resort Development Act 1987 (Qld).

3 An Open, Transparent and Accountable Planning System

BRU support the position that the planning system should be open, transparent and accountable to ensure that both the community and industry can have confidence in the decisions that are made. Further to this, BRU support the priorities outlined in Section 3 of the Directions Paper, adding that public notification periods should be extended to allow for thorough public consultation and greater awareness of proposed developments.

All planning and development information should be freely available to the community in the most convenient form possible. A good example where this is happening is the BCC's pdonline system, and it is suggested that this system be promoted state-wide. There should be no sealed development applications from any authority unless it is a matter of national security.

Ministerial call-ins should be applied more frequently and triggered on the basis of public protest and objection as well as for matters of State interest. Holding local councils to account is an integral part of the Minister's job and a hands-off approach is no longer acceptable.

Any changes to the planning framework should align with the Fitzgerald Principles of accountability and good governance:

- Govern for the peace, welfare and good government of the State;
- Make all decisions and take all actions, including public appointments, in the public interest without regard to personal, party political or other immaterial considerations;
- Treat all people equally without permitting any person or corporation special access or influence; and
- Promptly and accurately inform the public of its reasons for all significant or potentially controversial decisions and actions.

One of the first issues the Government should be addressing as part of planning reform is the inappropriate role paid by developer donations in local and state level planning. We have seen the corrosive impacts this has on planning outcomes by the results reported by the Independent Commission Against Corruption in New South Wales. All developer donations to all political parties need to be banned in Queensland.

There should be a requirement for planning chairpersons, elected representatives and council officers to scrupulously record meetings and fundraising activities with developers, and make this information available to the public in real time to ensure transparency.

4 Legislation with a better structure that solves the problems

Any appeal system should be accessible and transparent. It should require the assessment manager to present evidence to the appeal forum and be prepared to undergo questioning on their professional assessment of the application to the appeal forum.

The Sustainable Planning Act should include a definition of amenity within its foundation principles and define what reasonable expectations of residents should be. All planning schemes that are formulated should be forced by legislation to address the term Amenity, Amenity Outcomes, and resident's rights regarding Reasonable Expectations under a planning scheme. 'Reasonable Expectations' should directly relate to Acceptable Outcomes of Codes contained within Planning Schemes and whether a development is code assessable or impact assessable and therefore subject to appeal. These terms should be defined in the Act in the same way as the term Sustainable Development is defined.

Cumulative effects of development allowed in an area need to be examined in a consistent and systemic manner. For example in Toowong and the West End area, the parkland and sport and recreation facilities available for residents has been halved in the last forty years while the population has more than doubled. Sewage is already overflowing into Perrin Park in storm events as the local infrastructure fails to cope. Schools are running out of available places for new students and there are avoidable traffic bottlenecks as a result of poor planning. Public transport in the area is failing to cope with peak hour loads.

All planning should go through the same levels of community scrutiny. The State Assessment Referral Agency and all other authorities including the Urban Land Development Authority (ULDA) should not sit outside the normal Planning Legislation. Processes and organisations that lack transparency are always, in the public mind, subject to conjecture about corruption.

State government departments, such as EHP or the Department of Natural Resources and Mines that have a demonstrated interest in a planning or development decision should have their authority reinstated to operate as a concurrent power and not just as advisory agencies.

Attachment Two

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Brisbane Residents United.

Independent. Community. Vision.
Planning for the People

Department of Infrastructure, Local Government and Planning

By email only: bestplanning@dilgp.qld.gov.au

Dear Madam/Sir,

Submission on the Directions Paper: Better Planning for Queensland – Next steps in planning reform

This submission is made on behalf of Brisbane Residents United, Brisbane's peak body for community resident actions groups. whose purpose is to:

- Represent Brisbane and surrounding district residents and provide them with a united voice (and through which local resident groups can have a voice) to Council, State and Federal Governments on matters pertaining to urban planning and development.

- Act as a resource centre, facilitating information sharing across established and start-up local resident associations.

We have previously submitted to the directions paper. We note that many of the concerns and comments that we have made in that submission are not addressed in the draft legislation.

Consistency between and within councils and planning schemes is of critical importance, particularly to Heritage, Parks, Communities and Infrastructure across all council boundaries. It allows Cities and regional areas in the state to understanding the regulations with a degree of certainty in terms of being able to set ground rules that all developers must follow and communities can argue for and against.

Secondly, it helps to demystify the planning process. Developers should not need experts to help translate or even find the relevant parts of a planning scheme nor should the communities that struggle to understand what a performance based solution is. Standardisation helps empower ordinary users of the system be it developers and or communities.
It is one thing to have a local instrument in place, but when councils go against this and choose to use overarching instruments that are set down by the state, for the purpose of creating the local instrument it makes a mockery of the whole process of planning.

Applicants need to be aware of the complexity and number of different approvals that are required by government i.e. planning approvals; building approvals; heritage approvals, environmental approvals, etc.

In essence these are the overlays the council sets for all suburbs and communities; these are largely used by developers in their applications and then ignored and argued with the planning officers. Eventually the council gives in to their publically notified overlays. I.e. flood maps, airport environs, heritage listed properties etc.

They are all important but what Queensland needs is as much simplification, integration and lack of duplication as possible. This can be achieved in part by State Government and Councils ensuring that the legislation controlling each local government area is integrated as much as possible and where 'common processes' can occur. This currently does not happen and impacts greatly on all.

It can also be assisted by Council's exposing applicants for planning approvals to the need and requirements of other approvals early on and having relevant officers advising on issues that will crop up later.

We have master plans sitting in limbo with the council while the developer quietly seeks approval for individual buildings that will be built within the master plan. The developer doesn't need to show what the full plan will look like and keeps both the public and the council in the dark. Once enough buildings are approved it is currently inevitable the council will sign of on the master plan.

This is a process that needs serious consideration.

Thank you for the opportunity to make a submission on this Directions Paper. Our planning framework directs the development of our state, impacting across all areas of our communities, businesses and our delicate ecosystems. Our economy depends on the health of our environment. This is therefore some of the most important legislation in our state - it needs to be well considered.

Executive Summary

To move Queensland to a world class 'best practice' planning framework that reflects the needs and desires of Queenslanders and protects our state's ecology, key elements must be reformed to achieve three overarching urgent goals: to ensure protections for our damaged environment, transparent and accountable governance, and community participation in decision making.

The Directions Paper needs to be followed by a crucial extra step - additional consultation on detailed reform proposals, with a clear focus on the need for the planning framework to achieve broader conservation goals.

We do not agree that it is OK to allow the proposed LNP planning legislation – which was in many respects anti-environment - to proceed without a thorough reconsideration.
The issue of the effect of the LNP's planning bill being before the Parliament is more a matter of parliamentary procedure rather than a legal matter. We have a legal statement that they are not aware of any legal or parliamentary

impediment to Labor simply ignoring the LNP planning bill should it wish to do so. Alternatively, it might adopt some parts of the LNP planning bill into its own bill. Ultimately, Labor is the government of the day (with the support of Peter Wellington). We believe that it chooses what laws are passed by Parliament and we have voted the government to look after the wellbeing of the people it is elected to serve.

Consultation process needs crucial extra step

We note that the Directions Paper is relatively lacking in detail, and we understand its purpose is to prompt discussion rather than to provide firm understanding of what exactly is proposed by our Government for the new planning legislation.

1. The draft Planning Bill 2015 has attempted to achieve an outcome by reducing the amount of duplication and moving the more complex and procedural provisions into the regulations.

It is proposed that the number of state planning instruments be reduced from four to two. The State Planning Regulatory Provisions and the Queensland Planning Provisions are to be rolled into the Planning Regulation 2016, leaving the State Planning Policy and Regional Plans as the only 'state planning instruments' under the Planning Bill 2015.

As long as these regulations actually ensure councils need to abide by and follow these to the letter, there are more changes as below that still need serious revision. It's not just the two instruments it's actually the four key areas below:

A. Planning Regulation 2016;

B. Development Assessment Rules; this is a serious issue if changes are not made to not only state but local instruments.

C. Minister's Rules and Guidelines for Making or Amending Local Planning Instruments; Calling in developments that are clearly against local instruments should be a lot more common and consistent, not politically motivated.

D. Statutory Guideline for Local Governments, once a new planning bill is put in place all local instruments should be amended to reflect it.

Therefore, prior to the preparation of any Bill, an extra step is needed. We say that the public needs to see a clear outline of proposals so the community may give focussed feedback. We do not agree that it is OK to allow the proposed LNP planning legislation – which was in many respects anti-environment - to proceed without a thorough reconsideration, given the LNP consultation process was seriously deficient, for example without even a detailed discussion paper and with stakeholders meetings not even keeping minutes of meetings.

State of the Environment needs responsive framework

The recent Outlook Report on our Great Barrier Reef confirms that the status of our prized Great Barrier Reef, which suffers from the emissions from all of our land uses throughout Reef catchments, is 'poor' and getting worse.[1]

Further, the most recent State of the Environment Report in 2011 states that: *'[i]ntensification of land use and long-term changes in climate remain the most significant factors causing land degradation in Queensland.'*[2] The 2011 Report provides the following indications that our biodiversity is at risk:

- Koala populations, for which a multitude of regulations have been made to assist their protection over decades, have suffered a <u>68 per cent</u> decline between 1996–1999 and the latest reported survey in 2010; there are reported to be only 2000 koalas in the State at last count four years ago.[3]
- 'There are 90 regional ecosystems classed as 'endangered', 532 identified as 'of concern' and 764 listed as 'least concern'' under the *Vegetation Management Act 1999* (Qld).[4]
- Only approximately 5.01 per cent of Queensland is included in protected areas; considering the superlative features of our State's environment, this figure is very low.[5]

Three goals of the Planning Framework need to be achieved

To ensure Queensland has a world class 'best practice' planning framework that reflects the needs and desires of Queenslanders and protects our state's ecology, key elements must be included to achieve

Goal one: Protecting nature

Ecologically sustainable development - balancing the economic, social and environmental considerations - must be a key purpose in planning legislation, **with the principles of ESD enshrined in the Act**, **as it is in the current *Sustainable Planning Act 2009*** (**SPA**). The State of the Environment Report 2011 even refers to SPA as a key initiative for the 'management of impacts from human settlements on the environment' through guiding ESD in the State.[6] In the Reef 2050 Long-Term Sustainability Plan, provided to the World Heritage Committee to demonstrate our plan to reduce impacts on our degrading reef, the Queensland Government commits to ensuring that decision making is underpinned by the principles of ESD.[7]

We support the Government's intention to ensure that there is a requirement to advance the Act's purpose, provided in the Act as well as any State and local planning instruments (page 6).

We do not agree that 'prosperity' is used as part of the purpose of the Act – it is an uncertain term which implies economic wealth in standard dictionary definitions, and for which we understand there will be no definition provided to impart an alternative, more holistic meaning.

Ecologically sustainable development, ecology, biodiversity, wildlife, flora and fauna must be considered in the development of our planning framework - these terms are not mentioned anywhere in the Directions Paper, raising serious concern that conservation objectives may be undervalued or overlooked in any proposed planning legislation.

Performance indicators should be implemented through our planning framework – this is essential to help guide and assess the effectiveness of planning decisions, particularly with respect to providing protections for biodiversity. The performance of the planning framework should be measured against ecological baseline conditions, an understanding of which is necessary to inform planning reform. State of the Environment Reports could be used for this purpose, as the next report is due this year. State of the Region Reports for regional plans need to have meaningful performance indicators and be released in a timely fashion in advance of plan revisions to inform regional communities and foster debate.

State departments should have concurrence powers, as previously held, to allow special interest departments such as Department of Environment and Heritage Protection and Department of Natural Resources and Mines to provide a check and balance on assessment managers and to ensure more coherence in planning decisions.

Case example: The recent *Rainbow Shores v Gympie Regional Council & Ors* decision of the Planning and Environment Court (**P&E Court**) demonstrated the importance of specialist departments maintaining concurrence power. In this case the P&E Court upheld the recommendation of refusal provided by the then Department of Environment and Resource Management in their role as a concurrence agency to a development proposal near Rainbow Beach.

We support the Government's intention to better integrate planning instruments in Queensland (page 6). Currently protections found under one framework are not recognised, or overridden by another. For example, the *State Development and Public Works Organisation Act 1971* (Qld) (**SDPWO Act)** overrides the SPA entirely, granting broad powers to the Coordinator-General, for instance to 'step in' and take over development assessment and approval processes, with very limited decision making criteria and no merits review of decisions under the SDPWO Act. This undermines much of the value of developing a solid, considered planning framework if it can be completely ignored.

Goal two: Open, transparent, accountable planning framework

Any changes to the planning framework should align with Principles of accountability and good governance:

1. Govern for the peace, welfare and good government of the State;
2. Make all decisions and take all actions, including public appointments, in the public interest without regard to personal, party political or other immaterial considerations;
3. Treat all people equally without permitting any person or corporation special access or influence; and
4. Promptly and accurately inform the public of its reasons for all significant or potentially controversial decisions and actions.
5. The draft Planning Bill 2015 retains the fundamental structure of the present legislative framework. This is demonstrated in the way the draft Planning Bill 2015 has retained a development assessment system, State and local planning instruments, a hierarchy of regulatory instruments, and dispute resolution processes.

6. These assessment processes are nothing short of confusing and allow developments to get out of control, we need to have a consistent approach, if it's in the state plan then it should be mirrored in all local instruments, to many loop holes are in the current assessment process.

Fast tracking of development assessment processes must not be at the cost of meaningful community engagement and proper environmental assessment. This should be implemented through providing clear criteria and community submission, appeal and enforcement provisions through all Queensland planning instruments, including in the SDPWO Act, as mentioned above, the *Regional Planning Interests Act 2014* (Qld) and the *Integrated Resort Development Act 1987* (Qld).

Certain elements of the planning framework must be in SPA to ensure they are certain and enforceable, particularly access to information provisions. We do not support the general push to 'simplify' SPA by putting much of its content in subordinate legislation (page 9). For example, we do not support the access to information provisions being relegated to rules or regulations outside SPA (page 8), as detailed in the next point. Planning is by its nature complex and requires clearly defined 'process' to provide certainty; it is appropriate that our planning legislation is lengthy and provides for the processes, rights and obligations in the one Act rather than having to look at numerous other easily amended, non-enforceable instruments to understand key elements of the planning framework.

Planning Studies and Supporting Documents need to be required. Public consultation must also be a requirement for early drafts of local planning schemes. For good planning and meaningful community involvement, background documents and studies must be required to be produced and made public in advance of draft planning schemes AND other planning instruments such as regional plans or State Planning Policies (**SPPs**).

The Act must continue to provide for a public register that mandates public access to specific documents, as is currently the case in SPA. The Register must include monitoring data reported under development conditions. The legislation must require assessment managers to keep application and supporting documents available to the public both in hard copy at the counter and on their websites. The definition of supporting documents needs to be widened, for example, to include advice provided by advice agencies.

Planning provisions provide certainty and should reflect Government's current policy. State Planning Regulatory Provisions (SPRP) should be retained so as to keep the ability to prohibit inappropriate development. Removal of these provisions would reduce certainty and performance under planning schemes. Further, the SPP must be reviewed with public input and amended to reflect the policy of the current Queensland Government on the Great Barrier Reef, on biodiversity, and particularly to include reference to reducing greenhouse gas emissions and adaptions pertaining to climate change. We support that the Directions Paper acknowledges that climate change is a necessary consideration in land use planning (page 7).

Conditions of approval must be enforceable and assessment managers must be adequately resourced to ensure compliance and enforcement. Third parties must be provided with the right to assist with compliance and enforcement through rights to seek declarations, prosecutions and enforcement orders.
Non Appealable Decisions: The draft Planning Bill 2015 has introduced the concept of a "non-appealable" decision. However, at this stage of the drafting process the practical effect that this provision will have on appeal rights is unclear.

This needs to be a lot more transparent, all appellants should have the opportunity to either go to a tribunal in the first instance and then to the P & E court. This system should be geared equally for developers and for communities without the input by a local council, all decisions need to be at arm's length from planners and councils and totally impartial.

Everyone should have the right to appeal regardless if they have filed a submission against a developer. The council has put rules in place that make it very difficult for communities to understand the planning decisions and how to make properly formed submissions.

To this extent, any new Planning Bill put in place should also take into consideration the detail of submissions put forward against a developer and not treat submissions as a numbers game.

We request that the power to 'exempt' development proposals from assessment through a discretionary decision not be included in our planning framework, as suggested in the Directions Paper (part 9). This creates a dangerous loophole, which at least must be open to be reviewed under the *Judicial Review Act 1991* (Qld) with broad standing provisions.

Goal three: Community participation in decision making

We support Government's intention to ensure community involvement in decision making, both through rights to provide submissions which must be considered by decision makers and to appeal to the P&E Court, through clear terms, in legislation, without discretion (pages 7-8). Community rights to have their concerns heard in an independent Court are essential, and cannot be replaced with ADR which raises issues of power imbalances.

We support Government's intention to ensure the Act details notification and submission timeframes and requirements for developments to be publically notifiable in planning schemes (page 7). Public notification must be required to be undertaken after the information request stage and no major amendments to instruments or development applications must be allowed after public notification finishes, unless it is renotified.

We support Government's intention to restore the 'own costs' rules for planning appeals (page 8). The obstacles for community appellants are already significant, and risks of costs orders are a strong deterrent against community involvement in planning decision making.

Other Areas of Consideration required through the process of a new Planning Bill:

Assessment Rules: The most significant change resulting from the draft Planning Bill 2015 involves the way in which a development is assessed.

a. The following concepts will be introduced under the proposed legislative framework:

i. **Exemption certificates:** if an exemption certificate is issued, it will prevent an assessable development requiring a development approval.
This will exacerbate those problems we currently have with unsustainable development; we could see the destruction of pre 1946 tin and timber disappear from the landscape purely through this process alone.

ii. **Assessment benchmarks:** are matters that a development will be assessed against.

This is effectively another rephrasing of "performance based solutions" that are in place currently and will end up being even more of a problem unless very strict guidelines and transparency is put in place to understand what the benchmarks are against the local and state instruments.

iii. **Categorising instrument:** outlines whether the development is categorised as accepted, assessable or prohibited.

Rephrasing is the most common problem under the new planning bill, all this does is rename Self, Code and impact assessment under a different guise, so now developers can apply for a DA under prohibited and then use benchmarks to get it approved. Or the developer can apply for an exemption certificate to reclassify the DA.

B. as above the draft Planning Bill 2015 proposes the introduction of three categories of assessment:

i. **Accepted:** includes all developments other than assessable or prohibited developments. The accepted category is effectively a combination of the exempt and self-assessable categories under the Sustainable Planning Act 2009 (Qld).

ii. **Assessable:** applies to developments which can only be carried out with a development approval. Additionally, subject to the feedback in the public submission period, the code/impact assessment categories may be changed to standard/merit assessment.

iii. **Prohibited:** is a development where no application can be made.

Minor Change: The draft Planning Bill 2015 has altered the process for making a change application for a development approval. This has resulted in the replacement of the term "permissible change" with "minor change". The term "minor change" has a broader scope as it applies to development applications

as well as development approvals. However, the term “minor change” has a different meaning when it is applied to development applications in comparison to development approvals.

Again this is a broad stroke of a pen and means nothing, except to confuse and disengage communities from trying to understand the new rules, if it’s a minor change then it applies one way only, it should not have different definitions depending what application or approval is being sought.

We already see now that when an application is approved the developer immediately seeks for minor changes that they know may have prevented the approval in the first place. More robust rules need to apply to protect communities.

Longer Currency Periods but No More ‘Roll Forward’: The currency periods for development approvals will be extended:

We have already seen the extent of developers that now are applying for longer periods to enable the construction of multiple buildings from the profits of staging. In the past a developer may have need to ensure they had sold 60% prior to getting a DA. Today they get a master plan approved and build and sell as they go disrupting entire communities for years as they can’t fund entire projects over shorter periods.

Material Change of Use Development Approval: is extended from four to six years.

This puts all the power into a developer’s hand, should they decide to sell their land after an approval they also get the additional benefit of passing on the material change of use.

Serious considerations to all submissions should be taken seriously as this affects entire communities in not only Metro Queensland but also Regional Queensland.

In Full Summary:

As summarised previously, our key concerns with this planning framework are:

•The principles of ‘ecological sustainable development’ (ESD) are not adequately provided for or defined – with uncertainty as to whether key ESD principles, such as the precautionary principle, will even be included;

•Climate change and the environment only get tokenistic mention;

•Public consultation times on development applications have been reduced, compared to the Sustainable Planning Act 2009 (SPA) provisions prior to the Newman government’s changes;

•State Assessment Referral Agency (SARA) is being maintained – our State specialist departments only have ‘advice’ agency status and cannot require refusal, approval or conditions as they previously could;

•SARA can still make decisions that are inconsistent with the State development assessment provisions – which provide the criteria for assessment of matters of State interest;

•Costs orders may be made against third parties who take enforcement action under the Act. This was not provided for in SPA prior to LNP changes and does not follow through on Labor’s pre-election commitment; and

•No detail in the Act provided prescribing the types of documents that must be made accessible to the public – these are provided in the Regulation which is easier to change.

•Development assessment provisions are now provided in Rules which can be easily changed at the whim of any government;

•More flexibility is given to local governments in deciding content of local planning instruments, leading to possible inconsistency between local government areas in integrating consideration of environmental values and planning approaches;

•Major changes to development applications are not necessarily required to be re-notified; and

•Too many discretions are provided – including to allow non-compliance with public notification requirements, to allow public notification prior to an information request being finalised, and to provide exemptions from development assessment. Discretions, coupled with the ultimate power of SARA, open up our planning system to corruption. Where there is corruption in planning, the environment and community rights are the first to suffer.

Sincerely,

Dr Erin Evans
Steering Committee
Brisbane Residents United

Attachment Three
EDO Submission

Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
Brisbane Qld 4000
Sent via email: ipnrc@parliament.qld.gov.au

Dear Mr Chair and Committee Members

Submissions to Government and Private Member Planning Bills 2015

We welcome the opportunity to make submissions on the proposed planning frameworks introduced by the Government and the Private Member Tim Nicholls.

Overall, the three planning bills put forward by the current government (**Government planning framework**) are clearly better than the three planning bills put forward by private member Tim Nicholls MP (**Private Member planning framework**). We draw your attention to the scorecard prepared by the Environmental Defenders Office Qld.[8]

The Private Member planning framework is far inferior to the Government planning framework, because it:

- moves the substance of the planning framework into the supporting instruments – as does the Government planning framework - yet no supporting instruments have been provided by the Private Member to assess their adequacy. We do not support the changes in both frameworks to demote much of the contents of the Planning Act to supporting instruments – this creates uncertainty for all stakeholders as to what the law is, where to look for it, and when it might be changed. However, at very least the supporting instruments must be provided for the community to understand what is being proposed.
- does not adequately provide for ecologically sustainable development (**ESD**) as a key purpose of the Planning Bill; no definitions or explanations are provided for ESD nor is there a requirement to advance the purpose of the Act. ESD is an essential component of any planning framework and, as it is not an intuitive term, it must be supported by sufficiently detailed definition to guide its implementation.
- hinders community participation - through providing costs rules which allow more discretion for costs against community groups in planning appeals, no specifications in the Act as to minimum time frames for public consultation on development applications, no detail in the Act as to what information is required to be publicly accessible, and no requirement for the Minister to consult prior to calling in a development application.
- provides no checks and balances on the State Assessment Referral Agency (**SARA**) – both the Government and Private Member's bills provide for SARA to be the key assessment manager, without allowing specialist departments such as the Department of Environment and Heritage Protection (**DEHP**) to hold concurrence agency status for development that concerns their specialist areas, as they did prior to 2012. While the Government Planning Bill has introduced some measures to temper the monopoly decision making role SARA now has, including

requiring reasons to be provided for decisions made by the assessment manager, the Private Member's bills provide nothing to avoid SARA ignoring the advice of specialist departments.

Our environment needs strong protection

The recent Outlook Report on our Great Barrier Reef confirms that the status of our prized Great Barrier Reef, which suffers from the emissions from all of our land uses throughout Reef catchments, is 'poor' and getting worse.[9]

Further, the most recent State of the Environment Report in 2011 states that: *'[i]ntensification of land use and long-term changes in climate remain the most significant factors causing land degradation in Queensland*.'[10] The Report provides the following indications that our biodiversity is at risk:

- Koala populations, for which a multitude of regulations have been made to assist their protection over decades, have suffered a 68 per cent decline between 1996–1999 and the latest reported survey in 2010; there are reported to be only 2000 koalas in the State at last count four years ago.[11]
- 'There are 90 regional ecosystems classed as 'endangered', 532 identified as 'of concern' and 764 listed as 'least concern'' under the *Vegetation Management Act 1999* (Qld).[12]
- Only approximately 5.01 per cent of Queensland is included in protected areas; considering the superlative features of our State's environment, this figure is very low.[13]

Strong, well drafted planning laws to manage smart and sustainable development are essential to ensure Queensland has a healthy, clean environment now and for future generations.

We suggest that the Committee recommend the following:

1. **The planning bills introduced by Private Member Tim Nicholls *not* be passed.**
2. **The following elements of the Government's planning framework be supported:**

   (a) ***ESD is provided as a central purpose of the Planning Bill (section 3).*** The State of the Environment Report 2011 refers to Queensland planning legislation as a key initiative for the 'management of impacts from human settlements on the environment' through guiding ESD in the State.[14] In the Reef 2050 Long-Term Sustainability Plan, provided to the World Heritage Committee to demonstrate our plan to reduce impacts on our degrading reef, the Queensland Government commits to ensuring that decision making is underpinned by the principles of ESD.[15] ESD is integral to planning and must be the central purpose directing decision making under the Planning Bill and broader planning framework. We support the inclusion of section 5 of the Planning Bill requiring the advancing of the Act's purpose, provided in the Act. **However, we do not support section 45(4) which provides that code assessable development need not be assessed in accordance with the purpose of the Act.**

   (b) ***General rule that each party pay own costs provided in Government Court Bill (section 59)*** – this ensures that community groups are not hindered from participating in development appeals or enforcement actions for fear of receiving a costs order against them.

   (c) ***Assessment managers are required to provide reasons for their decisions for certain assessable developments (section 63(4) Planning Bill)***, however, this should be amended to include a specific requirement to detail how the advice of other referral agencies has or hasn't been integrated, into their decision for all assessable development, and if not followed, the reasons why not. This ensures more transparency in decision making and provides a check and balance on the power held by SARA.

3. **The Government's planning framework be passed only with these amendments:**

Protecting nature

(a) ***Provide for a requirement for SARA to follow the advice of certain specialist departments*** – whereas previously the assessment manager would be required to comply with the advice of a specialist concurrence agency on matters within their jurisdiction, SARA has been provided with a monopoly to decide development applications. This is

inappropriate for certain matters which may involve significant impacts to matters concerning specialist departments, such as matters impacting highly sensitive areas of the Great Barrier Reef, coastal zones, cultural heritage or vulnerable vegetation communities. SARA is not resources with specialists in these areas and is therefore not appropriate to make the final decision in all circumstances. By nature, SARA is likely to make pro-development decisions for shorter term benefit, compared to those departments with specialist knowledge in areas development may impact. Concurrence agency power for specialist departments assists in balancing the imbalance of power caused by SARA holding the final decision on planning matters.

We recommend that provision should be inserted in the Planning Bill to provide the Office of the Great Barrier Reef (**OGBR**), the Great Barrier Reef Marine Park Authority (**GBRMPA**), DEHP and the Department of Natural Resource and Mines with concurrence agency status as relevant to the above listed areas of specialist concern. This will provide a higher level of integration of specialist knowledge and collaboration through decision making. This will also rectify the incongruence that results whereby a development is approved/ conditioned by SARA in a way that does not comply with the recommendations of a specialist department, but the specialist department is still required to undertake compliance and enforcement action for the resulting development conditions, as occurs presently.

Example of potential impact if not changed: *Danny Developer wants to develop in an area mapped as highly sensitive to the Great Barrier Reef on the Great Barrier Reef Marine Park Authorities 'Blue Maps'. The OGBR and GBRMPA have specialist skills and knowledge which demonstrates that the development will pose a high risk to the Reef if it is allowed to go through as applied for; they provide advice to SARA that the development should be refused. SARA decides that there is a need from a planning perspective for this development and approves it, leading to further impacts to our vulnerable Reef and a failure to meet international expectations and commitments to protect our Reef from further damage.*

(b) ***Insert a requirement to consider both mitigation and adaptation to climate change***. Currently the Government Planning Bill only requires consideration of how climate change can be mitigated (section 3(3)(c)(iv)). Adaptation to climate change should also be a key consideration in planning legislation.

(c) ***Implement performance indicators into our planning framework* –** this is essential to help guide and assess the effectiveness of planning decisions, particularly with respect to providing protections for biodiversity. The performance of the planning framework should be measured against ecological baseline conditions, an understanding of which is necessary to inform planning reform. State of the Environment Reports could be used for this purpose, as the next report is now overdue. State of the Region Reports for regional plans need to have meaningful performance indicators and be released in a timely fashion in advance of plan revisions to inform regional communities and foster debate.

<u>Community involvement in decision making</u>

(d) ***Specify in the Act when an increased public notification period should be required, as provided for in section 53(4)(b)(ii) of the Planning Bill*** – a schedule should be provided for in the Planning Bill which specifies a minimum of 30 business days for high concern development, as was previously provided in the Sustainable Planning Regulation 2009 Schedules 16 and 17. We are pleased to see the insertion of ss53(4)(b)(ii) which may expand when public notification can occur for certain development – however this does not specify the 30 business days originally provided in SPA, and further, would be far better improved if the high impact development was provided for in a schedule to the Act itself, with a capability to add to this list in regulations.

Example of potential impact if not changed: *Danny Developer would like to a big tourist resort, accommodating 1500 people within 100 meters of the Wildlife Park, one of the best loved protected areas around Queensland. Danny undertakes public notification for the required 15 business days, with a total of 2000 pages of documents detailing the complex development proposal.*

Sally Submitter is very concerned that this development will impact significantly on the park. Sally works full time and is not an expert but she has a keen interest in protecting the environment and has legitimate concerns that the application is not

sufficient to properly explain the impacts that will occur on the national park values. Sally tries her best to get expert assistance in preparing a meaningful submission, but with 15 business days she was not able to commission anyone. Sally puts in the best submission she could but it only includes half of her legitimate concerns due to time constraints. If this development was applied for in 2011 Sally would have had a minimum of 30 business days to respond in the public notification period.

Accountable, transparent and certain decision making

(e) ***Remove section 45(4) which states that code assessable development need not be assessed in accordance with the purpose of the Act.*** Increasingly development is being categorised as code assessable – by including this provision the purpose of the Planning Bill becomes irrelevant for a significant number of developments, and our environment suffers.

(f) ***Remove section 60(2)(b) from the Planning Bill - which provides an unacceptable discretion to approve code assessable development without that development proposal complying with any of the assessment benchmarks***. Where is the assurance of quality, accountable, transparent decision making if decision makers can simply approve an application without compliance with the imposed assessment criteria?

Example of potential impact if not changed: *Danny Developer applies for a code assessable development in the center of Westside, being for a 25 story high rise. The development does not comply with any of the applicable assessment benchmarks; however the assessment manager really likes the idea of the development in this area and decides to approve the development. The community had no power to provide submissions on the development since, as a code assessable development, it was not required to be publically notified. The community therefore also has no power to appeal the decision, which was based on no criteria under the planning framework.*

(g) ***Remove and redraft section 48 of the Planning Bill - which provides a discretion as to who can be an assessment manager;*** ensure that an assessment manager can only be an appropriately qualified, objective person with no conflict of interest with a proposed project, with measures to address ramifications should a conflict of interest arise. The quality of planning decisions may easily be eroded by providing such a significant discretion to allow the proponent to choose who will assess their application, with such little guidance as to the qualifications necessary and no recourse should a conflict of interest arise.

(h) ***Remove section 46 of the Planning Bill - which provides the discretion to provide exemption certificates from development assessment***. Significant concerns have been raised with the loose level of discretion that this section provides to allow exemption certificates. This is not in line with accountability, transparency and quality development assessment and is open to abuse under bad governance.

Example of potential impact if matters in (g) and (h) above are not changed: *Danny Developer has a mate who works with the local government – Cameron Council. Cameron has a graduate diploma in planning. Cameron's mum, who also works in Council, puts Cameron on the list of persons able to be an assessment manager for development applications in their region. Danny chooses Cameron to be the assessment manager of his development application. Cameron owns shares in Danny's development, so he gladly accepts this request. Cameron decides that Danny's development qualifies for an exemption certificate, because he considers the development would only have minor impacts under section 46(3)(b)(i) of the Planning Bill, and therefore doesn't need assessment. Sally Submitter, who is concerned with the potential impacts of this development, knows that Cameron has shares in Danny's development, but there is nothing Sally can do to stop Cameron from being the assessment manager or from providing the exemption certificate.*

(i) ***Maintain IDAS structure and provide for it in the Act, as provided in the SPA currently*** – this will ensure certainty and remove discretions around when each stage must be completed, including ensuring that public notification must be undertaken after all information is provided by the proponent in the information request stage. Further, where an application is required to be re-notified, it should be notified for the full period, which this requirement placed in the Act.

Example of potential impact if not changed: *Danny Developer is keen to get an impact assessable development in Woolloona developed as soon as possible. Five days after he provides the application to the assessment manager, he undertakes public notification. After public notification is complete, the assessment manager decides that they require more information to understand what is being applied for and the potential impacts of the development. Danny provides the further information. Sally Submitter finds out about the further information provided about the application. Sally didn't provide a submission during public notification, but since reading the further information provided she now has concerns about the development. Sally asks the assessment manager to require re-notification on the basis of the new information provided. The assessment manager decides not to require re-notification as they would like the development to be undertaken as quickly as possible so that they can get through their backlog of applications. Sally loses any ability to provide submissions or appeal the development decision.*

(j) ***Amend sections 58 of the Planning Bill - to provide for deemed 'refusals', rather than 'approvals'.*** We do not support the inclusion of deemed approvals where assessment managers have not responded in time. The provision of a deemed approval coupled with reduced time frames for referral agencies and assessment managers to respond may lead to either more approvals or refusals – both without adequate consideration which will likely lead to an increase in resource draining planning appeals. If an agency or assessment manager hasn't responded in time, they clearly have not had time to properly consider the application – it is therefore nonsensical to then provide for a deemed approval. At very least there should be the option for the referral agency or assessment manager to require more time to consider an application, without the approval of the proponent.

Example of potential impact if not changed: *Amanda Assessor is the only assessment manager at Bangowrie Council, a very low resourced local government. Amanda is swamped with applications and is struggling to assess them in time. Danny Developer has an application being assessed by Amanda and Danny is keen to get his application assessed as quickly as possible. Amanda asks Danny to consent to an extension to allow her more time to consider his application; Danny refuses this request. Amanda decides to refuse the application as she has not been able to assess the application fully. Danny appeals this refusal, which sucks up more of Amanda and the Council's resources. The Council already has 5 other development refusal appeals which were started similarly because Amanda didn't have time to properly assess the application.*

Attachment Four
Submission Re: The Old ABC Site Toowong

I am writing to you to object to the Sunland development proposed for the ABC Coronation Drive site. This is the last sizeable riverside site available in Toowong. It is a 15,000 square metre flood prone site that has a river frontage of approximately 130 metres. It has a heritage-listed building, mangroves, Moreton Bay figs and large blue gums. It is the ideal site for a riverside park.

Toowong has more than doubled in population since the 1960s and yet it has almost half the parkland and sport and recreational space that it did then. It has lost the following sites:

1. The Toowong Bowls club river front site on Glen Road in 1967.
2. A major part of Moorland Park to Land Street and the widening of Coronation Drive in the 1970s. The parking space that services the Wesley Hospital from the 1990s.
3. The Toowong Library and associated park site in 2001.
4. The Toowong Pool in 2003.
5. The Auchenflower Bowls Club in Bayliss Street in 2003.

There have been no replacement sites. There has been an enormous increase in the number of apartments in Toowong. The infrastructure needed to service these new residents is lacking with no public plans for its provision. This site is an ideal opportunity to provide at least part of that recreational infrastructure now and to facilitate a plan for sustainable future growth.

Notwithstanding my objection to the proposed use of the site, the proposed density of 555 apartments is excessive, housing at least 1,000 residents. The proposed development does not comply with City Plan 2014 and in particular the

Toowong-Auchenflower Neighbourhood Plan. The tallest building in this development, at 114.35 metres, is the equivalent of a 34 storey building. All of the proposed new buildings are more than twice the maximum height of 15 storeys that is stipulated in the Neighbourhood Plan and does not further the purpose or stated outcomes of the neighbourhood plan.

These buildings will not enhance the amenity of the area for the existing residents. Much of the much-vaunted public space is taken up with pathways with very little greenspace or encouragement of the public to enjoy the amenity of the riverfront site.

A summary of my objections follow:

1. Need for Green Space and Sport and Recreation land: Toowong has insufficient green and recreational space available to its present growing population. This area has one of the highest proportions of young people in Brisbane with more young families moving into the area.

2. Traffic is already an issue in this area and will become much worse, as will parking. The main exit and entry of this development will be onto Coronation Drive near the right hand turn to High Street. This area already has serious traffic flow issues. The other exit from the site to facilitate a right hand turn towards the city will direct traffic down two small neighbourhood streets Archer Street and Glen Road and then out into Brisbane Street. Residents on these streets were never consulted about these changes.

3. The BCC have budgeted $3 million dollars to build a set of lights at Glen Road. This will be 300 metres from the lights at High Street and Coronation Drive and 190 metres from the lights at Josling Street, setting up a dangerous situation. Archer Street will also require widening. It is outrageous that there has been this unacceptable impost on the ratepayers of Brisbane to assist in the implementation of this development.

4. These are not a development of affordable housing nor are these luxury million dollar units with 800 car parks (almost half of the total car parks available (1640) in Toowong Village) a transport oriented development.

5. This area is clearly marked on Council maps as flood affected. The neighbouring sites will be more affected by future flooding as a result of the ground level of this site being built up in the attempt to flood proof it.

6. At 24 to 27 storeys, the buildings will be totally out of scale with the surrounding commercial and apartment buildings of 10 to 12 storeys and houses of one and two storeys. They will overshadow just about every building in the vicinity including Middenbury House and will interfere with the prevailing breezes. They will adversely affect the amenity, views and value for many current local residents and clearly do not meet community expectations for the site.

7. This stands in stark contrast to the development across the river at West End which is four and five storeys with a wide strip of green space on the river. Council has advised that the proposed new development will be less out of scale, once they approve a lot of new surrounding buildings that are also to be wildly in excess of the Neighbourhood Plan. That seems flawed reasoning.

You have the responsibility to protect and nurture the amenity for the present population and to create living space for a future larger population. This site is the last opportunity to replace lost public space for one of Brisbane's most well-known, oldest and visited suburbs. This should represent a model of good higher density planning. A community lives with bad planning decisions for a very long time, long after the developers and politicians that supported the development have moved on. This site should be public parkland.

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[1] Great Barrier Reef Marine Park Authority 2014, Great Barrier Reef Outlook Report 2014, available here: http://www.gbrmpa.gov.au/cdn/2014/GBRMPA-Outlook-Report-2014/

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