

**Submission to:**

Mr Jim Pearce MP  
Chair  
Infrastructure, Planning and Natural Resources Committee  
Parliament House  
George Street  
Brisbane Qld 4000

**Submission from:**

Mr Peter Ogilvie  
President  
Wildlife Preservation Society of Queensland  
95 William Street  
Brisbane Qld 4000  
Email: ogilvie.house@bigpond.com

**Re: *Planning (Consequential) and Other Legislation Amendment Bill 2015 (PCOLA Bill)***

**Overview**

The Wildlife Preservation Society of Queensland (Wildlife Queensland) is a leading and respected State-wide NGO advocating the protection of our native flora and fauna in concert with educating the community to better understand the principles of conservation and preservation of the natural environment.

We note that the purpose of the PCOLA Bill is to amend other Acts for the purposes of the *Planning Bill 2015*. In so doing, it appears to be removing powers that reside in other legislation in relation to planning schemes, and either dealing with them in the Planning Bill or arguing that they are redundant and no longer required.

There is an inherent flaw in any argument that assumes all planning wisdom resides in one area of government. That approach leads to a suspicion of any clause in another Act that purports to override a planning scheme. Two such clauses that are proposed to be removed from the *Nature Conservation Act 1992* fall into this category. The details are as follows:

**Clauses 334 and 335 of the PCOLA Bill**

Clause 334 proposes to omit section 106 (Orders prevail over planning schemes) of the *Nature Conservation Act 1992* (NC Act). The explanatory notes provide the following dubious reason for this action: *Clause 334 omits section 106 (Orders prevail over planning schemes) as a redundant provision. Applicable interim conservation orders and planning schemes both need to be complied with and one does not prevail over the other.*

Clause 335 proposes to omit section 122 (Conservation plans and regulations prevail over planning schemes) of the NC Act. A similar rationale for the action is provided in the explanatory notes: *Clause 335 omits section 122 (Conservation plans and regulations prevail over planning schemes) as a redundant provision. Applicable conservation plans, and regulations giving effect to management plans, and planning schemes each need to be complied with and one does not prevail over the other.*

The two sections of the NC Act were present in the original NC Act as assented to on 22 May 1992. They had different numbers at that time, namely section 98 and section 112. To argue that they are suddenly redundant 25 years later, in the absence of any changed circumstance, is questionable at best and deceptive at worst. In other words, the explanatory notes do not honestly express the reason for omitting these sections of the NC Act.

It stretches credibility and challenges logic to argue that a person should comply with an interim conservation order or conservation plan and a planning scheme when a conflict exists. Such conflict has occurred in the past, and will inevitably occur in the future. For example, an interim conservation order was utilised when the mahogany glider was rediscovered in north Queensland to prevent vegetation clearing that could have proceeded under a planning scheme.

To leave the matter unclear, and effectively ambiguous, is a recipe for unnecessary court action to resolve which conflicting component should prevail. As things stand at the moment, and have stood for a quarter of a century, there is absolutely no ambiguity. And, in the interests of legislative clarity and common sense, that is how it should continue.

In other words, sections 106 and 122 of the NC Act should not be omitted. If, however, there is some overriding imperative to draw all references to planning schemes into the Planning Act, then the intent of the two NC Act sections should be clearly expressed in the *Planning Bill 2015*.

### **Recommendation**

- 1. That sections 106 and 122 of the *Nature Conservation Act 1992* be retained and not omitted as proposed in the *Planning (Consequential) and Other Legislation Amendment Bill 2015*.**
- 2. That, in the event that recommendation 1 is not acceptable, a clause should be inserted in the *Planning Bill 2015* clearly expressing what is presently stated in sections 106 and 122 of the *Nature Conservation Act 1992*.**

Yours sincerely

A handwritten signature in black ink, reading "Peter Ogilvie". The signature is written in a cursive style and is followed by a long, horizontal flourish line.

Peter Ogilvie  
President  
Wildlife Preservation Society of Queensland