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West End Community Association Inc.

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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

Submission 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.

We are writing on behalf of the West End Community Organisation (WECA), which represents residents of the West End, Highgate Hill and South Brisbane area. The West End Community Association has a strong history and success in advocacy and mobilising our community when it matters most.

In 2010, as input to the Council development of our Local Plan, WECA facilitated thousands of hours of community consultation. This resulted in **5,500 resident submissions** to Council and led to the development of the vision statement for the West End community.

The vision stands for the creation of ***a world-class liveable, inner city neighbourhood***. It is built on the values of diversity, participation, safety and sustainability. Our area is experiencing extremely high levels of development without the commensurate fundamental infrastructure in transport, education and green space. Additionally we have seen many developments approved that are non compliant with our Local Area Plan. A recent example of this is at the former Distance Education site the developer was permitted by Council to account the laneway (Tondara Lane) as part of the 20% public open space that is required. The cumulative impacts of height and set back relaxations undermine the integrity of plans.

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.[1]

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.

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

[1] EDO Qld, *Scorecard: Queensland planning bills not up to scratch*, available here: http://www.edoqld.org.au/wp-content/uploads/2015/11/QCC1421-Scorecard-1211156.jpg

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 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 because the government bill allows for costs rules which allow more discretion for costs against community groups when they take legal action. This facilitates greater community involvement in important issues to the community – allowing for a higher level of participation in planning issues which impact on their quality of life.

On the subject of community participation, there is deep disquiet with the whole community consultation process where the community was 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.

There are specific areas that we highlight that need to be redressed and request that the Government framework only be passed with these amendments. We have worked with the EDO and support their assessment of the Bill and its implications.

Community involvement in decision making

(a) ***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

(b) ***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.

(c) ***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.

(a) ***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.

(b) ***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.*

(c) ***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.

(d) ***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.*

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.***

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 would like the opportunity to appear before the Committee in our capacity of membership of Brisbane Residents United.

Sincerely,

Dr Erin Evans, President,
West End Community Association