



**WWF-Australia**  
Level 1, 17 Burnett Lane  
Brisbane QLD 4000  
Postal: same as above  
  
Tel: +61 7 3003 1480  
Fax: +61 7 3229 4431  
enquiries@wwf.org.au  
@WWF\_Australia  
**wwf.org.au**  
ABN 57 001 594 074

Research Director  
Infrastructure, Planning and Natural Resources Committee  
Parliament House  
George Street Brisbane QLD 4000  
Email: [ipnrc@parliament.qld.gov.au](mailto:ipnrc@parliament.qld.gov.au)  
Date: 18<sup>th</sup> January 2016

## Submission to the Government's and Private Member's Planning Bills

Dear Sir or Madam,

WWF-Australia welcomes the opportunity to provide this submission regarding the Government's and the Private Member's planning legislative bills, which the members of the Infrastructure, Planning and Natural Resources Committee are currently examining.

This submission has been structured to provide the committee with a summary of the key issues associated with both sets of Bills followed by comments and recommendations regarding the private member's Bills and the Government's *Planning Bill 2015* and *Planning (Consequential) and Other Legislation Amendment Bill 2015*.

To provide a comparison between the private member's and the Governments Bills, we wish to draw the committee's attention to the [scorecard](#), which the Environmental Defenders Office of Queensland has prepared.<sup>1</sup>

### 1. Summary of key issues and recommendations

Robust planning laws are critical to Queensland's future prosperity. They need to facilitate good development to provide for the economic needs of Queenslanders. They also need to protect the natural resources that are the basis for both the economy and lifestyle that Queensland affords.

The Great Barrier Reef provides an excellent example of the challenges planning laws need to address. The GBR is not just an internationally re-known environmental asset, it is a crucial economic asset. Development which damages the health of the Reef should not be allowed to proceed due to the economic and environmental consequences.

The Government has recognized the importance the Reef and even made commitment to ensure development does not impact its values. However, the current Bills before

---

<sup>1</sup> 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>

Parliament do not give effect to the government's commitments, and will likely allow for sub-optimal economic and environmental outcomes.

- The private member's Bill does not contain mechanisms to ensure Ecologically Sustainable Development (ESD) principles are applied, significantly reduces the public's ability to engage in planning processes and increases uncertainty for stakeholders as a result of relocating mechanisms from the principle legislation to subordinate instruments. **Recommendation:** *The private member's Bills should be rejected due to the above and other deficiencies*
- While the Government's *Planning Bill 2015* will deliver better outcomes compared to the private member's planning Bills, the Government's Bills also have significant deficiencies. This includes a lack of legislative measures to deliver the Government's commitments under the Reef 2050 Long Term Sustainability Plan (**Reef 2050 LTSP**) including commitments to significantly reduce catchment pollution, as well as to address cumulative impacts from development to ensure a net benefit for the Reef. **Recommendation:** *The Government's Bills must be amended to include specific measures that enable its water quality improvement targets and other commitments in the Reef 2050 LTSP to be delivered*
- , The consequential amendments to other legislation as a result of the introduction of the new planning legislation also fail to provide the mechanisms to deliver the Governments water quality improvement targets and other Reef 2050 commitments. **Recommendation:** *Consequential amendments to other legislation as a result of the introduction of the new planning legislation must include measures to achieve the Government's water quality improvement targets and deliver its commitments to UNESCO contained in the Reef 2050 LTSP.*
- The Queensland Auditor-General's report *Managing Water Quality in the Great Barrier Reef* recommended last May: *The newly formed Office of the Great Barrier Reef be provided with sufficient and appropriate management and administrative authority, so that it can be properly made responsible and held accountable for Queensland's reef management strategies and programs*  
**Recommendation:** *The Office of the Great Barrier Reef be given concurrence powers for development which may impact the values of the Great Barrier Reef.*

## 2. Private member's Bills

Key issues associated with the private member's Bills includes:

### **Increased uncertainty**

As many planning mechanisms will be relocated to subordinate legislation under the private member's Bill, this will increase local government, developer and other stakeholders uncertainty as the various components of the state's planning legislation will be difficult to locate, interpret and can be amended without the users of the state's planning legislation being consulted. In addition, the private member's Bill does not

contain any mechanisms to assess or review the effectiveness of the planning mechanisms that are relocated to subordinate legislation.

### **Failure to apply Ecologically Sustainable Development (ESD) Principles**

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, which has not been included in the private member's Bills.

### **Reducing public participation**

The private member's Bill significantly reduces public participation in planning processes as a result of:

- Introducing rules that allows more discretion for when costs are awarded against community groups in planning appeals
- Not specifying the minimum time period for public consultation on development applications
- Not providing details regarding what information about development applications will be publicly accessible and;
- Not including provisions that require the Minister to consult with the public prior to calling in development applications

### **Failure to include check and balance mechanisms**

The private members Bill does not providing any check and balance mechanisms on the State Assessment Referral Agency (**SARA**), such as allowing the Department of Environment and Heritage Protection (**DEHP**) and other specialist agencies to hold concurrence powers over development applications, which affect their specialist areas

### **Recommendation**

Due to the above and other deficiencies, the private member's Bills should be rejected in their entirety.

## **3. Government's Planning Bill 2015**

Key issues associated with the Governments Planning Bill includes:

### **a) Failure to include measures to deliver Reef 2050 LTSP commitments**

The Reef 2050 LTSP contains the actions the Queensland Government has committed to implement to avoid UNESCO placing the GBRWHA on the World Heritage In-Danger List. UNESCO is to undertake of review of progress by the end of 2016. Key actions under the Reef 2050 LTSP include:

- **WQT1:** Achieve a 50% reduction of anthropogenic end-of-catchment dissolved inorganic nitrogen loads in priority areas by 2018, increasing to achieve 80% reduction in nitrogen loads by 2025. Achieve a 20% reduction of anthropogenic end-of-catchment sediment loads in priority areas by 2018, increasing to achieve 50% sediment reduction by 2025

- **EHA8:** Implement a net benefit policy to restore ecosystem health, improve the condition of GBRWHA values and manage financial contributions to that recovery
- **EBT3:** Cumulative impacts caused to the GBRWHA by human activities are understood and measures to ensure a net environmental benefit approach for the GBRWHA are implemented
- **EHT4:** Key direct human-related activities are managed so that cumulative impacts are reduced and to achieve a net benefit for the GBRWHA

Implementing the above and other actions contained in the Reef 2050 LTSP will necessitate a Whole-of-Government approach must be taken, which will necessitate that measures to deliver Reef 2050 LTSP actions must be embedded in all relevant state legislation, including the states planning legislation.

### **Recommendation**

Amend the Government's Planning Bill to include specific measures that will enable the delivery and achievement of commitments to UNESCO contained in the Reef 2050 LTSP.

### **b) Failure to include measures to achieve water quality improvement targets**

The Queensland Government is committed to achieving water quality improvement targets contained in the Reef Plan. The majority of water quality degradation in the GBR is a result of poor agricultural practices that causes elevated levels of sediment, nutrients and pesticide in runoff to enter the GBR lagoon. Therefore it is essential that specific measures are included in the state's planning legislation so that new agricultural development in GBR catchments is properly planned and assessed to ensure that any further degradation of water quality in the GBR is avoided.

### **Recommendation**

Amend the Government's Planning Bill to include mechanisms that require new agricultural development in GBR catchments to be properly planned and assessed.

### **c) Failure to include climate change adaption measures**

As it is currently drafted, the Government's Planning Bill only requires consideration of how climate change can be mitigated (section 3(3)(c)(iv)). Given the implications to Queensland's communities, adaptation to the effects climate change must also be a key consideration in the states planning legislation.

### **Recommendation:**

Amend the Government's Planning Bill to include climate change adaptation measures.

#### **d) Advancing the purpose of the Act**

Under section 3, Ecological Sustainable Development is a central purpose of the Government's Planning Bill. However under section 45(4) of the Government's Bill, the purpose of the Bill does not need to be considered when code assessable development is being assessed and approved. As this anomaly has the potential to result in unforeseen perverse outcomes, we strongly recommended the removal of section 45(4) of the Government's Bill.

#### **Recommendation:**

Section 45(4) of the Government's Planning Bill 2015 must be removed.

#### **e) Improving community participation in planning processes**

Measures to improve the community's participation in planning processes include:

- Incorporating a provision under section 59 of the Government Court Bill stipulating that each party pays their own legal costs, which will ensure that community groups are not hindered from participating in development appeals or enforcement actions due to the apprehension fear of court costs being awarded against them
- Amending section 53(4)(b)(ii) of the Governments Planning Bill to include provisions that require development applications to be publically notified for a minimum of 30 business days; as is currently required under schedules 16 and 17 of the *Sustainable Planning Regulation 2009*. While the length time a development application is publically notified can be increased under section 53(4)(b)(ii), this section of the Governments Bill does not specify the *minimum* time a development application is publicly notified

#### **Recommendations**

- 1) Amend section 59 of the Governments Planning and Environment Court Bill 2015 to include a provision stipulating that party's involved in Planning and Environment Court litigation pay their own costs
- 2) Amend section 53(4)(b)(ii) of the Governments Planning Bill to include provisions that require development applications to be publically notified for a minimum of 30 business days

#### **f) Ensuring decision-making processes are accountable and transparent**

Measures that should be incorporated into the Governments Planning Bill to increase the accountability and transparency of planning decision-making processes includes:

- Under section 63(4) of the Government's Planning Bill, include provisions that require assessment managers to provide details about how they have considered the advice of non-concurrence agencies or why they haven't integrated non-concurrence agencies advice in their assessment of a development application

- Incorporating provisions in the Government's Planning Bill that requires the State Assessment and Referral Agency (**SARA**) to comply with advice provided by specialist government agencies. When it established SARA the former government removed concurrence powers held by other agencies, which has essentially enabled SARA to ignore other agencies advice and monopolise the assessment and approval of development applications. This is highly inappropriate given that SARA does not currently have either the resources or in-house technical expertise to properly assess adverse social and environmental impacts potentially caused by proposed development projects. As its primary purpose is to facilitate economic development, SARA is more likely to assess and approve development applications with a stronger focus on shorter-term benefits, which has the potential to be counter-productive for future generations of Queenslanders. Due to this, providing specialist agencies such as the Department of Environment and Heritage Protection (DEHP), Department of Natural Resources and Mines (DNRM), the Office of the Great Barrier Reef (OGBR) and the Great Barrier Reef Marine Park Authority (GBRMPA) with concurrence powers will ensure that other matters that are critically important to Queensland's future are fully integrated into the assessment and approval of proposed development projects. Along with ensuring all important matters are fully considered when assessing and approving development projects, providing concurrence powers to other agencies will also rectify the incongruence that currently occurs when a development project is assessed, approved and 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 actions for the resulting development conditions.
- Incorporating key performance indicators (KPI) into the Governments Planning Bill, which is essential to assist guide and assess the effectiveness of planning decisions - particularly in regard to protecting, the GBR biodiversity and other environmental values. 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. 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 and foster regional communities involvement
- Removing section 60(2)(b) from the Planning Bill, which provides the discretion to approve code assessable development without the development proposal having to comply with assessment benchmarks. An array of perverse outcomes such as poor quality assurance, lack of transparency and potential corruption could occur as result of giving decision makers the discretion to approve development applications without having to comply with assessment criteria



- Removing section 48 of the Government’s Planning Bill, which provides discretion about who is appointed as the assessment manager of a development application. Retaining this provision could result in an array of perverse outcomes including development proposals being assessed and approved by unqualified persons, conflict of interests and potential corruption as result of development proponents influencing the selection of persons appointed to manage the assessment and approval of their development project
- Removing section 46 of the Planning Bill, which provides the discretion to grant exemption certificates from development assessment. Significant concerns have been raised regarding the loose level of discretion that is applied to this provision, which is not in line with good accountability, transparency and quality assurance practices and is potentially open to corruption
- Retaining the IDAS structure that is contained in the Sustainable Planning Act, which will provide certainty and remove discretions about when each stage of the development assessment and approval process must be completed, including when public notification of the development application occurs
- Amending section 58 of the Planning Bill in order 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 need to gain the proponents approval

### **Recommendation**

Amend the Governments Planning Bill to incorporate the above-mentioned matters

## **4. Planning (Consequential) and Other Legislation Amendment Bill**

### **a) Mechanisms to achieve Government water quality improvement targets and deliver commitments to UNESCO**

Along with needing to be embedded in the State’s planning legislation, mechanisms to achieve the Government’s water quality improvement targets under Reef Plan and commitments to UNESCO under the Reef 2050 Long Term Sustainability Plan must also be included in other relevant legislation. Examples of the mechanisms that need to be incorporated in other legislation include but isn’t limited to the following:

- Under the appropriate planning instrument, designating the Great Barrier Reef World Heritage Area and Marine Park as a state interest under the State Planning Policy
- Under section 16 (1) of the *Vegetation Management Act 1999*, The Minister may prepare a declaration that a stated area is— **insert** (c) critical to providing ecosystem services and functions that maintains and enhances the ecological condition of the Great Barrier Reef
- Under section 47 of the *Water Act 2000* (current version), Matters the Minister must consider when preparing draft water resource plan - **insert** (p) the effect the take and use of water resources for consumptive purposes in Great Barrier Reef catchments will have on the ecological condition of the Great Barrier Reef

### **Recommendation**

To achieve the Government's water quality reduction targets and deliver its commitments to UNESCO, the above-mentioned and other similar amendments should be made to relevant legislation

### **b) Issues associated with proposed amendments to Nature Conservation Act 1992**

Clause 334 of the Government's consequential amendment Bill will omit section 106 of the NCA, which states that (conservation) orders issued under section 102 of the NCA will prevail over a planning scheme.

Under section 102, the Minister can issue a conservation order if he/she is of the opinion that— (a) threatened or near threatened wildlife; or (b) a protected wildlife habitat that is, in the Minister's opinion, a critical habitat; or (c) an area of major interest; or (d) a protected area is subject to a threatening process that is likely to have significant detrimental effect on the wildlife, habitat or area, the Minister may make an interim conservation order for the conservation, protection or management of the wildlife, habitat or area.

As development is recognised as the major threat to Queensland's wildlife, no longer requiring conservation orders to prevail over planning schemes by removing section 106 of the NCA will significantly reduce the Nature Conservation Act's ability to protect the states biodiversity.

Clause 335 of the Government's consequential amendment Bill will omit section 122 of the NCA, which states that conservation and management plans that have been prepared under for an area under section 120 (h) of the NCA will prevail over planning schemes.

Under section 120H (1) of the NCA, the Minister may prepare a conservation plan for any native wildlife, class of wildlife, native wildlife habitat or area that is, in the Minister's opinion, an area of major interest.

As development is recognised as the major threat to Queensland's wildlife, no longer requiring conservation and managements plans for an area to prevail over planning schemes by removing section 122 of the NCA will significantly reduce the Nature Conservation Act's ability to protect the states biodiversity.



### **Recommendation**

As it will reduce the Nature Conservation Act's ability to protect Queensland's wildlife, clauses 334 and 335 of the Government Planning (Consequential) and Other Legislation Amendment Bill 2015 should be omitted.

### **5. Conclusion**

Please do not hesitate to contact me should you require any further information or clarification regarding the matters raised in this submission. WWF-Australia would appreciate the opportunity to appear before the Committee in the public hearing attached to their examination of the private member and Government's planning Bills.

Yours sincerely,

Sean Hoobin

Program Manager – Freshwater

WWF-Australia

0424 142 840