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Gecko - Gold Coast and Hinterland Environment Council Assn Inc.

ABN 90 689 258 843

Gecko House, 139 Duringan Street, Currumbin, Qld 4223.
Telephone 07 5534 1412 Facsimile 07 5534 1401
info@gecko.org.au www.gecko.org.au

16th 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

Submissions to Government and Private Member Planning Bills 2015

Gecko-Gold Coast and Hintlerand Environment Council Assoc. In. (Gecko) made a submission to your Committee in July in relation to the Private Member Planning Bills (Prosperity) in July 2015 and we attach that original submission as part of this submission.

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

Gecko- Gold Coast and Hinterland Environment Council Assoc. Inc. is a not-for-profit environment association founded in 1989 and has been active for the past 26 years in protecting the environmental values and ecological sustainability of the Gold Coast, Queensland and, when appropriate, nationally.

"*To actively promote, conserve and restore the natural environment and improve the sustainability of the built environment of the Gold Coast region in partnership with our member groups and the wider community.*"

Gecko believes it is essential that community views are taken into account in relation to planning matters as these affect the amenity, lifestyle and opportunities available to ordinary citizens. Planning legislation that is slanted towards one sector of society such as the development industry results in poor planning outcomes which in the long run are inequitable and costly to our community as a whole.

Gecko endorses this submission developed by the Environmental Defenders Office and adds our own comments in italics in addition to the attached letter.

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]

[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

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

- *No supporting instruments have been provided by the Private Member to assess their adequacy, even though the substance of the planning bills has been moved to the unknown instruments. It is true that the Government bills do the same thing, but the instruments are available for scrutiny and submissions on them by the community are due by 5th February 2016*. 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. *Queensland is still a signatory to the Intergovernmental Agreement on Ecological Sustainable Development and this surely should be demonstrated in planning legislation.*

- hinders community participation, *an essential ingredient in an effective democracy*, - 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. *The proposed bills are, in our opinion, biased in favour of the development industry.*

- 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. The Private Member's bills provide nothing to avoid SARA ignoring the advice of specialist departments, 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. *This is still not satisfactory to Gecko and we strongly advocate for concurrence powers to be returned to 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.[2]

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*.'[3] The Report provides the following indications that our biodiversity is at risk:

[2] 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/

[3] Queensland Government, '*State of the Environment Report'* (2011), available here: http://www.ehp.qld.gov.au/state-of-the-environment/report-2011/pdf/executive-summary.pdf

- 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.[4]
- '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).[5]
- 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.[6]

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.[7] 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.[8] 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. *This measure alone has resulted in community members failing to appeal unsatisfactory planning decisions on genuine grounds for fear of decisions and costs awarded against them. The law should be made as equal as possible for all users.*

(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.

[4] Ibid, p.viii.
[5] Ibid, p.ix.
[6] Ibid.
[7] Ibid, p.x.
[8] Commonwealth Government, Reef 2050 Long-Term Sustainability Plan, p.35, available here: http://www.environment.gov.au/system/files/resources/d98b3e53-146b-4b9c-a84a-2a22454b9a83/files/reef-2050-long-term-sustainability-plan.pdf

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

<u>Protecting nature</u>

(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 resourced 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 *especially since the commitment to the international community of the Australian and therefore State Governments to reduce greenhouse gas emissions under COP21.*

(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.

Community involvement in decision making

(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. *It should be recognized that community members need more time to assess complex development applications, because they frequently do not have ready access to specialists in order to fully understand the implication of the development for the wider community. Nor is development assessment their job and as such more effort is required to understand the application and its relationship with planning legislation and city plans.*

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. *Gecko seriously questions the purpose of providing this extra benefit for code assessable developments. Surely the purpose of a Planning Act must apply to all development assessments.*

(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? - *What is the point for having assessment benchmarks if they are not required to be adhered to? Would a person seeking a driver's licence be allowed to gain that licence without demonstrating an ability to meet the assessment benchmarks? 'Developments have serious and permanent impacts on neighbourhoods and compliance with*

assessment benchmarks is essential especially since community members have no rights of submission on code assessable development. This is a recipe for disaster!

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. *Gecko fully supports this statement*.

(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. *This coupled with the suggestion that an assessment manager does not necessarily have to be appropriately qualified is totally unacceptable and will inevitably lead to community conflict with both developers and councils.*

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.

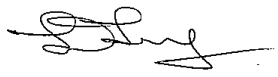
Example of potential impact if not changed: *Danny Developer is keen to get an impact assessable development in Woolloona developed as soon as possible. Five days after he provides the application to the assessment manager, he undertakes public notification. After public notification is complete, the 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. *The crux of this situation is the inequitable distribution of resources between well-resourced development companies and publicly resourced council planning departments. Obviously developments must be assessed in a timely manner but planning legislation must take into account that councils are less likely to have the full resources they need to assess all applications in a short period of time.*

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.*

Yours sincerely



Lois Levy

Acting President and Advocate

advocate@gecko.org.au

0412 724 222

Gecko - Gold Coast and Hinterland Environment Council Assn Inc.

ABN 90 689 258 843

Gecko House, 139 Duringan Street, Currumbin, Qld 4223.
Telephone 07 5534 1412 Facsimile 07 5534 1401
info@gecko.org.au www.gecko.org.au

12th July 2015

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

Dear Research Director

Submission on the Draft *Planning and Development (Planning for Prosperity) Bill 2015 and Planning and Development (Planning Court) Bill 2015*

Gecko- Gold Coast and Hinterland Environment Council Assoc. Inc. (Gecko)is a not-for-profit environment association founded in 1989 and has been active for the past 25 years in protecting the environmental values and ecological sustainability of the Gold Coast, Queensland and, when appropriate, nationally. Our Mission statement is:-"*To actively promote, conserve and restore the natural environment and improve the sustainability of the built environment of the Gold Coast region in partnership with our member groups and the wider community.*"

Thank you for the opportunity to make a submission on these Private Member Bills. The environment and all members of the community are impacted by the implementation of planning decisions based on the Planning legislation framework. Gecko believes strongly that planning for our State and cities must engage the community as well as those industries involved in development and property. As such, Planning legislative frameworks must provide for:

- transparent and accountable decision making processes, with clear and firm criteria not subject to discretion of bureaucrats or Ministers without good law based evidence;
- statutory rights enabling the community to participate in planning decision making through submission and appeal rights; and
- statutory rights enabling easy public access to all necessary information to properly understand the likely impacts of a development proposal. This is a particular problem if regulations giving the detail of the Bill intentions are not available to the public at the time of submissions on the Bill.

Gecko is very concerned that these Bills do not provide for these essential elements of democratic planning legislation and we request that the Committee recommends that these Bills are not passed. It is also important to recognise that the (then) current Government is in the process of developing planning reform legislation that will be out for public submission before the end of 2015 and to pass these private members bills before this time unreasonably complicates this reform process.

Planning and Development (Planning for Prosperity) Bill 2015

The importance of Ecologically Sustainable Development

Ecologically Sustainable Development (ESD) is the foundation of best-practice planning and development and has been a requirement for all State Governments to adhere to since 1992. Gecko supports that ESD has been included in the purpose of the Bill, however for ESD to be truly integrated into planning decision making in line with national and international standards:

- it should be the core purpose of the Bill – in line with the Sustainable Planning Act 2009 section 3, not simply a means of achieving the vague concept of 'prosperity', which is not sufficiently defined for the average reader to determine if this concept includes ESD;
- the principles of ESD must be provided for in the Bill;
- there must be a requirement that this purpose be advanced in decision making under the Act.

Community involvement in decision making

This Bill makes community participation in decision making discretionary and provided for only through subordinate legislation or rules. It is unacceptable to reduce community rights to make submissions on legislation and development decisions and is clearly contrary to the concept of democracy. The community is often unaware of subordinate legislation or rules which further compounds the lack of opportunity for participation in decisions that affect them. Further, the drawing up of a regulatory framework subsequent to the passing of a Bill may not provide public consultation opportunities into the drafting of the framework. Community participation in decision making is essential to transparent and accountable planning and development and is necessary to ensure decisions are informed by local knowledge and reflect all relevant interests and have community support. As stated by ICAC, NSW (2012): *The absence of third party appeals creates an opportunity for corrupt conduct to occur, as an important disincentive for corrupt decision-making is absent from the planning system.*

Public submission rights lead to appeal rights. The requirement for public notification and the right to make submissions on impact or 'merit' development applications must be obligatory and provided for in the Act, with details specified in the Act as to how and when this must be undertaken. Public notification must be required to be undertaken after the information request stage so that the community is as informed as possible when making submissions. The time frame for making submissions should afford the public a reasonable period within which to understand draft Bills and to make meaningful comment. A draft Bill years in planning cannot be properly examined over a period of a few weeks.

Public access to planning and development information

This Bill greatly weakens transparency in planning decision making by providing:

- requirements for public access to information through 'access rules' which have not yet been seen. This is a good example of legislation being put out for public comment without the public having knowledge of all aspects of the legislation that will affect them. Public access to information must be a requirement provided in detail in the Act, not in rules which may be changed easily, which are not enforceable and often unknown to the community;
- a loose and discretionary approach to the type of information required to be made available to the public – the types of documents and information must be clearly listed in the Act; and
- no obligation for the information request stage to be undertaken prior to public notification; the public must be as informed as possible prior to making their submission, this saves all stakeholders time and money.

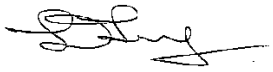
Public access to planning and development information is integral to a transparent and accountable planning system. Gecko does not support reform that weakens rules regarding access to information and allows for decisions regarding access to be made arbitrarily by a bureaucrat or other, especially when the criteria for the decisions is unknown to the public or very difficult to access.

Planning and Development (Planning Court) Bill 2015

Free and fair access to the court

Gecko completely rejects recent changes to cost rules under the planning legislation which open up the possibility of costs applications against submitters. There are already numerous hurdles hindering the public from utilising their rights to participate in development appeals and the cost of mounting a case is already formidable and not taken lightly by community members. It is in the public interest, and the interests of transparency and accountability, to support community access to the court by maintaining the 'own costs' rule. The 'own costs' rule must be enshrined in our planning legislation in Queensland.

Yours sincerely



Lois Levy. OAM
Vice President