ABN 46 101 092 637
Phone 07 3398 8003
Email b4c@bulimbacreek.org.au
Website www.bulimbacreek.org.au
PO Box 5, Carina 4152
Address Cnr Wright St and 1358 Old Cleveland Rd
Carindale, QLD, 4152

BULIMBA CREEK CATCHMENT COORDINATING COMMITTEE

Providing Specialised Ecological Services

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 a submission on the proposed planning frameworks tabled in Parliament by the Government and the Private Member Tim Nicholls.

Bulimba Creek Catchment Coordinating Committee Inc (B4C) is a not-for-profit social enterprise, based in Carindale, Brisbane. Our mission is to protect and enhance natural areas in our catchment and in the SEQ Region, through on ground rehabilitation as well as education of the general public. We are concerned with planning policy and compliance at all levels of government, in order to best protect and improve natural areas. While we support the Brisbane Residents United submission and the EDO advice, we have our own priorities, which we hope are reflected in this submission.

The Environmental Defenders Office (EDO) has compared and contrasted four Acts and Proposals regarding State Planning Laws between 2001 and 2015, in regard to the best practice planning criteria. We have read and considered the points explained by the EDO.

As a non-for-profit community organisation, involved in promoting sustainable development and protection of the urban environment, we wish to make the following points about the proposed planning legislation frameworks. The three planning bills tabled by the government are superior to the private member planning bills tabled by Mr Tim Nicholls MP. The LNP sponsored legislation had no real community consultation and we believe transparency is not considered at a high level.

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 Qld government legislation ensures that Ecologically Sustainable Development (ESD) is a central purpose of planning legislation. Unfortunately, the Private Members Bill (the Planning Act) does not provide this.

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 release of the supporting documentation undermines the capacity to take a systemic view of the impacts of the legislation and creates uncertainty.

ABN 46 101 092 637
Phone 07 3398 8003
Email b4c@bulimbacreek.org.au
Website www.bulimbacreek.org.au
PO Box 5, Carina 4152
Address Cnr Wright St and 1358 Old Cleveland Rd
Carindale, QLD, 4152

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 Legislation needs to be revised and redrafted rather than this hastily prepared version. The 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 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 an 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. It is not capable of being understood by the ordinary person.

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.

There is deep anxiety 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. This department appears particularly dismissive of the community – even across different governments.

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.

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, but is becoming the norm for this department. Without knowing the full range of issues and people's expectation, it is not possible to make an adequate submission.

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.

ABN 46 101 092 637
Phone 07 3398 8003
Email b4c@bulimbacreek.org.au
Website www.bulimbacreek.org.au
PO Box 5, Carina 4152
Address Cnr Wright St and 1358 Old Cleveland Rd
Carindale, QLD, 4152

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.

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 to allow the proponent to choose who will assess their application, because conflicts of interests arise.

This provision encourages the appointment of private development assessment managers, and in concert with the level of discretion that section 46 provides, to allow exemption certificates, it is concerning.

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.

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 affected 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 SARA.

ABN 46 101 092 637
Phone 07 3398 8003
Email b4c@bulimbacreek.org.au
Website www.bulimbacreek.org.au
PO Box 5, Carina 4152
Address Cnr Wright St and 1358 Old Cleveland Rd
Carindale, QLD, 4152

The Bill should incorporate a legislative requirement for The State Assessment Referral Agency (SARA) to comply with the advice of specialist referral 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 nor 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 Heritage Department was that no development should be allowed as a tree from Lone Pine will be destroyed as part of the development.

We have read and endorse the submission prepared by the Environmental Defender's Office, Queensland, particularly the proposal that the Private Member's Bills should not be passed. We support with 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.

What is confronting us, as an environmental community group, is the ability of developers and owners to bypass provisions of City Plan and have no fear of Councils defending developer appeals in Court. They call the bluff every time now. Also there is the lack of parkland dedications, even in environmentally sensitive areas and areas deprived of meaningful and connected greenspace and habitat. This is appalling.

We are seeing weak State Planning Legislation allowing developers to pre-emptively clear everything without A VPO on it regardless of its environmental significance or connectivity. We are seeing organisations like BMD and its Cannon Hill Golf Links, Belmont Rifle Range (Supported by the Dept of Infrastructure and Planning) ride roughshod over our organisation, when we sought partnerships and improvements on land that is owned by the public and has environmental values and landholders' responsibility to advance that co-use.

On the Gold Coast the Council has tried to intimidate and threaten Councillors who voted to stop the planned filling of Black Swan Lake at Bundall. There should be an independent inquiry into what this Council has done and how it is wasting public money on frivolous dredging of the lake to make it look financially unviable to retain as a public asset. Where is the State Government when all this is going on?

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 sought and fully implemented. This is showing up in the filling of floodplains at suburbs like Hemmant and the pre-emptive clearing of vegetation. These are all compromising environmental values of Rural Residential areas and changing the face of these suburbs to cheap, flood-prone ghettos without the required infrastructure to achieve Ecologically Sustainable Development. The current undermined and flawed State legislation lays at the heart of this and allows Council to turn the other cheek when confronted with the choice of defending its planning policy in court or even adhere to its development assessment processes.

Yours sincerely

HJ Barns

Heather Barns, Secretary of B4C