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Sent via email: ipnrc@parliament.qld.gov.au

Dear Chair and Committee Members,

Submission to Government and Private Member Planning Bills 2015

Thank you for the opportunity to make a submission on the proposed planning frameworks introduced by the Government and the Private Member, Tim Nicholls.

Overall, the three planning bills put forward by the current government (Government planning framework) are better than the three planning bills put forward by private member, Tim Nicholls MP (Private Member planning framework).

The scorecard prepared by the Environmental Defenders Office, Queensland, in attachment 1, shows the deterioration in planning practices and community consultation and government transparency.

I make the following observations:

- QPEC should be a designated court with specialist judges so that they develop a body of experience to allow balanced decisions to be made. They should not be rotated in from the Magistrates Courts without appropriate briefings on current planning legislations and that QPEC has accountability as an assessor and not as an arbitrator.
- I 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 and how it might be changed.
- Ecologically sustainable development (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. 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.
- I do not support the changes in both the Government and Private Member's bills for State Assessment Referral Agency (SARA) to be the key assessment manager, without allowing specialist departments such as the Department of Environment and Heritage Protection (DEHP) holding concurrence agency status for development that concerns their specialist areas, as they did prior to 2012.

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 Committee should recommend the following:

1. **The planning bills introduced by Private Member Tim Nicholls should *not* be passed for the following reasons:**
   - They move the substance of the planning framework into the supporting instruments. As yet no supporting instruments have been provided by the Private Member to assess their adequacy.
   - They do not adequately provide for 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.
   - They hinder 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.
   - They provide no checks and balances on SARA.

2. **The following elements of the Government's planning framework are supported:**

   (a) *ESD is provided as a central purpose of the Planning Bill (section 3).*
   - I support the inclusion of section 5 of the Planning Bill requiring the advancing of the Act's purpose, provided in the Act.
   - However, I 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)***

   It is important that community groups are not hindered from participating in development appeals or enforcement actions for fear of receiving a costs order against them. This is particularly the case at the small community level where few cases make it to QPEC and the threat of costs is enough to deter valid cases.

   The number of truly vexatious cases is particularly small and using costs a deterrent is not warranted. Often cases that are deemed vexatious are when a development is pushing the boundaries on what is allowed legislatively.

(c) ***Assessment managers are required to provide reasons for their decisions for certain assessable developments (section 63(4) Planning Bill)***,

The good work of developing integrated planning instruments and the goodwill developed with the community in developing those plans has been completely thrown away by the lack of transparency in decision making, the flagrant changes to these plans by stealth and the failure of the governments to properly defend their own planning instruments.

The new legislation must make **all** assessments fully public and detailed as to their reasons for any deviations. This will increase the government transparency and accountability for their decision making and fulfil their position as public entities.

It is illegal for assessors to make decisions beyond their statutory powers.

All decisions must 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 and, in particularly, SARA.

Where decisions have been made by QPEC, particularly on the definition of terms and criteria, these must be taken into account by the future assessment teams. Currently these precedents are being ignored.

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

Protecting nature

(a) ***Require SARA to follow the advice of specialist departments***

A 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.

(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.

(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. 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 developments, as was previously provided in the Sustainable Planning Regulation 2009 Schedules 16 and 17. It 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.

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 developments are 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 community and environment suffer.

(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? Code assessable is being abused to allow inappropriate developments to avoid public scrutiny.

If a development fails any of the code assessment criteria, it should be assessed as impact assessable. This will prevent inappropriate developments trying to gain approval and improves transparency of the assessment team (given all decisions are to be made public).

(g) ***Remove and redraft section 48 of the Planning Bill - which provides a discretion as to who can be an assessment manager;***

It is critical for the assessment process to be open and above board. Fundamental to this is to 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 is easily 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.

Town planners should be registered as are architects and engineers. This will improve the accountability of assessment managers.

(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.

(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.

(j) ***Amend sections 58 of the Planning Bill - to provide for deemed 'refusals', rather than 'approvals'.***

Accountability, transparency and quality development assessment cannot 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 inappropriate to then provide for a deemed approval. At a minimum 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.

Yours sincerely

Bill Morgan

Attachment 1: EDO (Qld) assessment of proposed planning legislation

Best Practice Planning Criteria Environmental Defenders Office (Qld) & Queensland Conservation Council	*Sustainable Planning Act 2009 (c.2011)*	*Sustainable Planning Act 2009 (c.2015)*	Proposed Qld Opposition Bills June 2015	Proposed Qld Government Bills Nov 2015
PROTECTS NATURE – Must achieve ESD – Environmental values strongly protected – Climate change acknowledged – Parks, open space and recreation areas	3.5	2.5	1.25	2.4
COMMUNITY INVOLVED IN DECISION MAKING – Guaranteed access to required information – Adequate submission & third party appeal rights – Adequate notification and consultation timeframes – Costs cannot be awarded against community	4	2.75	1.5	3.5
OPEN, ACCOUNTABLE AND TRANSPARENT – Strategic outcomes and meaningful KPI's required in planning schemes – Compensation does not limit responsiveness – Appropriate checks on Ministerial powers – User friendly and accountable assessment system	3.75	3.5	1.75	2.25
PROVIDES CERTAINTY – Developers cannot by-pass principal legislation – Non-complying development cannot be approved – Community knows how and when it can intervene – Regional plans are statutory, strategic and developed collaboratively	3.5	1.5	1.1	1.5

LEGEND: SCORES OUT of 5 where:
0.5 – 1.9 = RED
2 – 3.4 = AMBER
3.5 - 5 = GREEN