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Infrastructure, Planning and Natural Resources Committee

From: President Brisbane Residents United
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To: Infrastructure, Planning and Natural Resources Committee
Subject: Submission for Infrastructure, Planning and Natural Resources Committee from Brisbane Residents United

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18 January 2016
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Infrastructure, Planning and Natural Resources Committee
Parliament House
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Sent via email: ipnrc@parliament.qld.gov.au

Dear Mr Chair and Committee Members

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

This submission is made on behalf of Brisbane Residents United, Brisbane's peak body for community resident actions groups. Whose purpose is to:

• Represent Brisbane and surrounding district residents and provide them with a united voice Governments on matters pertaining to urban planning and development.

• Act as a resource centre, facilitating information sharing across established and start-up local resident associations.

We have previously submitted to the Directions Paper (Attachment One) and the Draft Legislation (Attachment Two). We note that many of the concerns and comments that we have made in both submissions are not addressed in the tabled legislation. We have attached a copy of both Submissions

As a resident community group involved in planning issues we wish to make the following points about the proposed planning legislation frameworks. We believe that the three planning bills tabled by the government are superior to the private member planning bills tabled by Tim Nicholls MP. The LNP sponsored legislation had very limited community consultation and seems to have been drafted to benefit the development industry at the cost of the transparency and good governance that the community expects.

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 government legislation at least ensures that Ecologically Sustainable Development (ESD) is a central purpose of planning legislation. The Private Members Bill (the Planning Act) does not provide adequately for ESD to be a key purpose of this particular legislation.

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 piecemeal release of the supporting documentation undermines the capacity to take a systemic view of the impacts of the legislation and creates uncertainty that is as unnecessary as it is dangerous. 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 whole of the Legislation needs to be comprehensively revised and redrafted rather than this hastily prepared version that has been created under the same 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 experienced Town 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. The government bill allows for costs rules which do not follow the outcome of the matter and allow for very restricted circumstances if costs are awarded against appellants when they take legal action. This facilitates greater involvement by resident community groups in important planning and development issues in the community – allowing for a higher level of participation in those issues which impact on their quality of life.

There is deep disquiet with the whole community consultation process particularly when the community was purposefully 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.

This lack of accountability and transparency is reflected in the legislation. Particular attention should be paid to the following sections of the Government's legislation. Development is becoming increasingly code assessable. 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.

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. 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

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 as 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.

This provision encourages the appointment of private development assessment managers and in concert with the extreme level of discretion that section 46 provides to allow exemption certificates it is highly concerning. This poses an unacceptable risk that Queensland will allow the mistakes seen in Sydney such as seven people buying 1-bedroom units only to find that the units have been completed as bedsits; a number of deaths of Asian students through fires occurring in units that had been illegally altered; a unit with a toilet pedestal next to the sink and no internal walls being described as the next best thing for affordable mini units.

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.

Many of the communications that Brisbane Residents United has with residents across Brisbane involve cases where decisions relating to height, width and mass, have been allowed to override local planning codes impacting on the privacy and amenity of local residents and destroying the local character. 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 effected 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 State Assessment Referral Agency (SARA).

The Bill should incorporate a legislative requirement for the SARA to comply with the advice of specialist referral and technical advisory 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, or 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 Department of Environment and Heritage Protection was that no development should be allowed as a tree from Lone Pine will be destroyed as part of the development. The Petrie Fig Tree near Customs House is also under threat as is the full heritage value of the site itself. These examples highlight the lack of rigor and the imparting risks regarding our invaluable heritage.

We have read and endorse the submission (Attachment Three) prepared by the Environmental Defender's Office, Queensland, particularly the proposal that the Private Member's Bills should not be passed. We support 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. A copy is attached.

However, our concerns about the transparency of the legislation are of such a serious nature, that consideration should be given to organising an independent out-of-State review of the Government's planning bills to ensure future planning legislation is transparent, ethical and democratic.

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 sort and fully implemented not just given lip service. Surely we should get a say in what we are asked to pay for. Consider the proposed expenditure on Kingsford Smith Drive which has been proposed as a result of the need to service the many developments to the area. This is a very clear example of public funding for private benefit.

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 request the opportunity to appear before the Committee in their hearing into this inquiry.

Yours sincerely

Elizabeth Handley

Spokesperson
The Brisbane Residents United steering group