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EDO Qld.
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Using the law to protect our environment.

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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:

Planning Bill 2015	**(**Government Planning Bill**)**
Planning and Environment Court Bill 2015	(Government Court Bill**)**
Planning (Consequential) and Other Legislation Amendment Bill 2015	**(**Government Consequential Amendments Bill**)**
Planning and Development (Planning for Prosperity) Bill 2015	(PM Planning Bill)
Planning and Development (Planning Court) Bill 2015	(PM Court Bill)
Planning and Development (Planning for Prosperity—Consequential Amendments) and Other Legislation Amendment Bill 2015	(PM Consequential Amendments Bill)

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

Our submissions on the Bills are provided in summary in this letter and in more detail in:

- **Appendix A:** submissions on the Government Planning Bills;
- **Appendix B:** submissions on the Government Planning Court Bills;
- **Appendix C:** submissions on the Government Consequential Amendments Bills; and
- **Appendix D:** excerpt from Sustainable Planning Regulation 2009 (Qld), Reprint 4A effective 14 December 2012, Schedules 16 and 17.

Who we are

The Environmental Defenders Office (Qld) (**EDO Qld**) is a non-profit, non-government community legal centre with expertise in environmental and planning law. We assist Queenslanders who live in rural, coastal and urban areas to understand their legal rights to protect the environment. EDO Qld has over 20 years' experience in interpreting environment and planning laws to deliver community legal education and to inform law reform.

Summary

We suggest the Committee recommend the following:

1. **The planning Bills introduced by Private Member Tim Nicholls *not* be passed.**
2. **Certain elements of the Government's planning framework be supported, detailed below.**
3. **The Government's planning framework be passed only with the numerous amendments detailed in the Appendices to this submission.**

Background

This reform process started under the Newman State government and has been a significant investment of resources for government, industry and the community, with doubtful benefits. We advocated for a policy process in which studies and broad consultation are undertaken on the current framework, to explore in an evidence based way, what amendments are necessary to improve Queensland planning. No such comprehensive, transparent, evidence based studies were prepared.

However, 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**). The Private Member planning framework was developed with very little consultation with the community and the conservation sector. While the Government and Private Member Bills have some common features, , there are numerous flaws with the Private Member planning framework which lead us to suggest the easiest approach in this instance is to take a very broad approach to the Private Member Bills, and focus on improvements to the Governments Bills. It is unfortunate that the Private Member Bills have been introduced, for the additional resources this has consumed of the Committee and community in dealing with two sets of frameworks.

There are some beneficial elements provided by the Government planning framework in comparison to *Sustainable Planning Act 2009* (Qld) ('SPA') as it stands today. These benefits could have been provided simply by amending SPA. Nevertheless, we provide our recommendations and comments below to support the Committee's consideration of the planning frameworks under inquiry.

EDO Qld scorecard analysing planning frameworks

To assist in the analysis of the frameworks against our current planning legislation and our legislation prior to 2012, EDO Qld has prepared a scorecard.[1] This scorecard is supported by a detailed analysis table, which we would be happy to provide should it be of assistance. The scorecard details the changes that have occurred to planning in Queensland since 2012, and those proposed, against the headings of:

- protecting nature;
- community participation in decision making;
- open, accountable and transparent; and
- provides certainty.

[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 scorecard demonstrates that the current legislation and both proposed frameworks are all inferior when considered in light of the above criteria against the *Sustainable Planning Act 2009* (Qld) (SPA) prior to changes from 2012 onwards. However, the scorecard also clearly demonstrates that the Private Member Bills are far inferior compared to all other frameworks.

We suggest that the Committee recommend the following:

1. **The Planning Bills introduced by Private Member Tim Nicholls *not* be passed.**

   We particularly suggest that the Committee recommend that Private Member's Bills are not passed because:

   (a) **No supporting instruments are provided by the Private Member, which contain the substance of the framework**. Both the Government and Private Member frameworks move the substance of the planning framework into the supporting instruments. We do not support this change 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 how the framework is proposed to operate in practice. The Private Member's Bills are particularly skeletal due to the further extent the PM Planning Bill relies on documents outside the Act to provide the substance of the framework.

   (b) **Ecologically sustainable development (ESD) is inadequately implemented 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.

   Human development is the biggest impact we have on our environment and our communities. Our planning framework provides the fundamental protections to regulate development impacts on our natural resources and plant and animal species – both terrestrial and marine, as well as to ensure development is appropriate to the community's needs. It is essential that ESD is a central purpose of the planning Act and is well defined for adequate implementation in decision making.

   Community participation is inadequately provided for. Community rights to provide submissions and appeal to the P&E Court are a check and balance to ensure good planning decisions are made for the environment and community, free of corruption and politics, and that the community's interests are represented. The Private Member framework greatly undervalues the role of community participation by proposing many attacks on community rights, including:

   - costs rules which allow more discretion for costs orders 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.

(c) **No checks and balances are provided for 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. This significant power was taken away in 2012 without adequate public consultation. While the Government Planning Bill has introduced some measures to mildly 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.

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.[2] 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.[3] 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 (used instead of impact assessable category increasingly in planning schemes) 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)**. We support restoration of this general 'own costs' rule. It removes one barrier to community groups participating in development appeals or enforcement actions. It is in the public interest such groups participate, and not be deterred by fear of a costs order in legitimate cases.

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

[2] Ibid, p.x.
[3] 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 the amendments detailed in the Appendices A, B and C to this submission. Particularly noting the following essential amendments:**

   (a) Provide for a requirement for SARA to follow the advice of certain specialist departments – the Office of the Great Barrier Reef (OGBR), the Great Barrier Reef Marine Park Authority (GBRMPA), DEHP, the Heritage Council and the Department of Natural Resource and Mines. Restoring powers to specialist departments into final planning decision making will ensure better planning decisions and more coordination between governmental objectives;

   (b) **Remove section 60(2)(b) from the Planning Bill - which provides an unacceptable discretion to approve code assessable development without a development proposal complying with any of the assessment benchmarks.** Assessment benchmarks are rendered useless if development is not required to be assessed against them; this significantly degrades the transparency and accountability of our planning system. Decisions must be made against certain, clearly articulated and transparent criteria to provide certainty and accountability in planning decision making; and

   (c) Remove section 45(4) which states that code assessable development need not be assessed in accordance with the purpose of the Act. This is currently also a flaw in SPA. Designation of code assessable development categorization is increasing across Queensland in planning schemes. If code assessable development continues to not be required to be undertaken in accordance with the purpose, the purpose is being rendered ineffective. Important concepts of ESD, such as the precautionary principle and intergenerational equity, are therefore not required to be integrated into code assessable decision making. This could lead to increasingly poorer planning decisions at the detriment of our environment and community. All decisions under the planning framework should be required to be made with reference to the purpose of the Act.

   (d) Performance indicators should be required to be integrated into State and local planning instruments. Performance indicators, help ensure that strategic outcomes are grounded in tangible, measurable steps; which helps ensure that outcomes are reached and/or review of achievement of outcomes is more meaningfully undertaken. An example may be a strategic outcome of the provision of adequate vegetation buffers around all rivers in a region to protect riverine ecosystem health. This could be supported by performance indicators that no development is allowed or approved which removes vegetation within 20 meters of a river bank, and the total 80 % of 20 metres vegetated river banks in the planning scheme area.

We would appreciate the opportunity to appear before the Committee in their hearing into this inquiry.

Yours faithfully
Environmental Defenders Office (Qld) Inc

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APPENDIX A

Submissions on Government Planning Bill 2015

Contents

1. Purpose of the Act (Chapter 1)

Summary:

(a) We support the integration of ecologically sustainable development (ESD) into the purpose of the framework.

(b) We suggest that the principles of ESD could more be more fulsomely and authentically reflected by reflecting the definitions and guidance provided in the Commonwealth Government National Strategy for Ecologically Sustainable Development

(c) We applaud the Government for not including the word 'prosperity' as the overarching purpose of the Act, as was proposed by the Private Member Bills.[4] The Private Member Bills do not define 'prosperity', which by plain definition vacuously refers to 'success' or alludes mainly to economic gain[5] - ignoring the other key elements that planning law should aspire to provide for, being community and environmental health and wellbeing.

(d) We support the inclusion of section 5 to advance the purpose of the Act to guide how decision makers must advance the purpose of the Act. ESD is not an intuitive term – guidance is necessary to ensure it is appropriately applied in implementing the requirement to advance the purpose of the Act. Further, this is the only means that fundamental provisions of ESD, such as the precautionary principle and intergenerational equity, as well as other important considerations in planning (short, long-term and adverse environmental effects of development, amenity and sustainable use of resources etc) are brought into the framework. As stated above, section 3 is in need of amendment to ensure the true meaning of ESD is integrated into the planning framework meaningfully, and as intended by the Commonwealth Government's definition in the National Strategy.

Purpose must include ESD with good guidance on how to integrate ESD to decision making

ESD is a concept which has been well embedded in State and Commonwealth laws in Australia since 1992. Since the National Strategy for ESD, the principles of ESD have been further developed in Australian law and are now embedded in five key principles under section 3A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**). Under a long standing national agreement, the Intergovernmental Agreement on the Environment (**IGAE**), the Queensland Government is bound to use the principles of ESD to inform all relevant policy making and program implementation.[6] Further, the Queensland government's Coastal Zone Strategic Assessment acknowledged obligations under the Intergovernmental Agreement on the Environment (**IGAE**) and stated '[t]he underlying

[4] *Planning and Development (Planning for Prosperity) Bill 2015* (Qld).

[5] Collins English Dictionary (HarperCollins, 2003) defines *prosperity* as: *"the condition of prospering; success or wealth";* The Macquarie Dictionary provides: *"prosperous, flourishing, or thriving condition; good fortune; success";* Webster's College Dictionary (Random House, 2010) defines *prosperity* as: *"a successful, flourishing, or thriving condition, esp. in financial respects; good fortune."*

[6] Intergovernmental Agreement on the Environment, section 3.5 <http://www.environment.gov.au/node/13008>

policy intent of the Queensland government Program is to achieve ecologically sustainable development (ESD) throughout the GBR coastal zone.'[7]

The Commonwealth Government has defined ESD as 'using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased'.[8] The *Environmental Protection Act 1994* (Qld) reflects the true definition of ESD as provided by the Commonwealth National Strategy for ESD.[9] Queensland planning legislation has slowly moved away from this definition to reflect instead a balancing of economic, community and environmental considerations – this is not the same as the intent provided by the Commonwealth Government's definition. Where a balance of these three elements is required, environmental considerations are inevitably given the least weight as they are simply not quantified in the same manner as economic and community considerations. If the true cost of environmental impacts were factored into this balance, our planning and development landscape would look very different.

We note section 5 includes some of the 'guiding principles' of ESD which underpin and guide the interpretation of the definition, requiring application of fundamental concepts such as the precautionary principle, intergenerational equity and broad community involvement in decision making.[10] These concepts are the backbone of ESD and must be integrated in full if the Government is serious about integrating ESD as the purpose of the framework. The concepts have also been used in Queensland Planning and Environment Court decisions, and are likely to do so in the future. We note again our disapproval that code assessable development is not currently or proposed to be required to be assessed against the purpose and therefore not required to be assessed in accordance with key ESD principles, such as the precautionary principle.

2. State planning instruments (Chapter 2 – Part 2)

Summary:

(a) **We do not support the removal of the requirement for key elements be integrated into regional plans, including the composite desired regional outcomes and strategic outcomes for environmental matters. We suggest this be reinstated in the Bill, as provided in SPA, as these guide the achievement of strategic outcomes in regional plans.**

We do not support the reduction in guidance around regional planning, including the removal of key elements for regional plans. These key elements provided in SPA require the identification of 'desired regional outcomes', policies to achieve these outcomes and

[7] Great Barrier Reef coastal zone strategic assessment, part 2.1.1 <http://www.statedevelopment.qld.gov.au/resources/report/gbr/gbr-coastal-zone-strategic-assessment-program-report.pdf>

[8] Commonwealth Government, *National Strategy for Ecologically Sustainable Development* (1992) <http://www.environment.gov.au/about-us/esd/publications/national-esd-strategy-part1>

[9] *Environmental Protection Act 1994* (Qld), s 3.

[10] Commonwealth Government, *National Strategy for Ecologically Sustainable Development* (1992) <http://www.environment.gov.au/about-us/esd/publications/national-esd-strategy-part1>

the desired future spatial structure involving the maintenance of environmental and other resources.[11] Providing clear guidance as to what must be included in regional plans ensures more transparency and certainty in regional planning. This certainty also provides the community with something to assess a regional plan against for its adequacy in meeting the necessary requirements. We recommend these elements be reintegrated into the Bill, with a requirement to consider environmental and social matters regionally, including the cumulative impacts of development planning.

(b) **We suggest that performance indicators are integrated into regional planning instruments - being intermediate steps to achieve the strategic outcomes and review their progress.**

To ensure strategic outcomes are met, we suggest that meaningful performance indicators are required to be utilised in regional planning instruments. Performance indicators provide quantitative and qualitatively measurable steps to ensure the achievement of strategic outcomes and assist with the review of the effectiveness of the scheme. An example may be a strategic outcome of the provision of adequate vegetation buffers around all rivers in a region to protect riverine ecosystem health. This could be supported by performance indicators that no development is allowed or approved which removes vegetation within 20 meters of a river bank, and the total 80 % of 20 metres vegetated river banks in the planning scheme area.

We recommend that the State Government be required to undertake a review of State planning instruments against these performance indicators every 5 years, to ensure the instruments are operating effectively and will have better chance of meeting the strategic outcomes.

(c) We do not support the reduced guidance for the establishment and membership of regional planning committees. We suggest that the attention to the importance of these committees as provided in SPA be provided in the Bill.

There are only minimal requirements for establishing any regional advisory committees with no specific guidance on membership or role and no authority under the legislation. This may easily result in a reduction in the quality of regional planning – which should rather be a key policy focus of Government's desire to improve Queensland planning.

(d) **We recommend the Bill be amended to require that reports are prepared prior to amending or new instruments, to review the current policies and their effectiveness and what the community wants from the future plan/policy. These reports should be public consulted upon and publically available.**

We suggest that the Bill be amended to require that studies be undertaken prior to amending or preparing new State instruments. These studies can assess the effectiveness of the current policies and their implementation – which will provide a more meaningful and transparent basis for the preparation of new or amended instruments.

[11] *Sustainable Planning Act 2009* (Qld) s38.

(e) We do not support that regional plans and the State Planning Policy are no longer specified as statutory instruments, as they are currently under SPA.

3. Local planning instruments (Chapter 2, Part 3)

Summary:

(a) We recommend that planning schemes, according to best practice, should be required to incorporate key matters, such as strategic outcomes with meaningful quantitative and qualitative measures/performance indicators to guide how these will be achieved. This ensures consistency and quality in local planning instruments in providing for a holistic representation of key elements in their schemes. Performance indicators are a practical means of assisting in the achievement and review of planning objectives.

We suggest that the means of ensuring consistency between planning schemes lies with these required elements being well defined, along with an improvement in the review of the schemes by the State Government.

The Bill removes the requirement to integrate core elements into planning schemes. We understand the policy behind this was that the required content section (s 15) of SPA did not result in consistency between schemes, which was their purpose. This is not a logical reason to take them out – rather it signifies that the requirements should be redrafted to be more specific and work in combination with more effective review of the planning schemes prior to the Minister approving them. Clearer overarching themes could be required as core elements, with the supporting guidelines providing more guidance as to exactly how these core elements should be implemented in schemes.

As for regional instruments, to ensure strategic outcomes are met, we suggest that meaningful performance indicators are required to be utilised in local planning instruments. Performance indicators provide quantitative and qualitatively measurable steps to ensure the achievement of strategic outcomes and assist with the review of the effectiveness of the scheme. We recommend that local governments be required to undertake a review of their schemes against these performance indicators every 5 years, to ensure the schemes are operating effectively and will have better chance of meeting the strategic outcomes.

(b) **We recommend the Bill be amended to require that reports are prepared prior to making or amending local planning instruments, to review the current policies and their effectiveness and what the community wants from the future plan/policy. These reports should be publically consulted upon and publically available.**

As for regional instruments, we suggest that the Bill be amended to require that studies be undertaken prior to amending or preparing new planning schemes. These studies can assess the effectiveness of the current policies and their implementation – which will provide a more meaningful and transparent basis for the preparation of new or amended instruments. The achievement of performance indicators could guide or form a core part of these studies.

4. Superseded planning schemes – compensation (Chapter 2 - Part 4)

(a) We do not support the provision of compensation rights for 'adverse planning changes'. This is an unwarranted use of taxpayer funds.

Fundamentally we believe Queensland should, like NSW, remove the power to obtain compensation from local governments under planning legislation. This is an unnecessary waste of taxpayer funds that could be better used. If compensation rights are provided in planning legislation, they should not in any way tie the hands of decision-makers to be responsive to the changing land-use needs over time.

5. Types of development assessment (Chapter 3 - Part 2)

Summary:

(a) ***Remove section 45(4)*** **- We do not support that code assessable development need not be assessed against the purpose of the Planning Bill – this makes the purpose irrelevant to what is an increasing number of development proposals classified as code assessable.**

(b) ***Remove section 46*** **- We do not support the broad discretion to provide exemption certificates, which creates uncertainty for the community.** Discretions like this have the potential to be abused under bad governance. If this discretion is provided, there should be a requirement on the decision maker to provide and publish reasons as to why an exemption certificate was considered to be appropriate. If allowed to remain, reasons should be required to be published by the decision maker to justify the provision of the exemption.

(c) We recommend that the Planning Bill provide prescriptive guidance as to circumstances when a development should be code versus impact assessable – there is currently significant discretion held by local governments to decide the assessment level for development in their region. Code assessable development categorisation is increasingly being provided by local governments, which is leading to less public consultation on development applications.

(d) We support the retention of the terms currently used in SPA – impact and code development. The changes to the development assessment framework in the planning Bill are not substantial enough to warrant changing the terms; changing the terms is unnecessarily confusing for all stakeholders and further reduces the accessibility of the planning system to lay people already familiar with the current terms.

6. Development applications (Chapter 3 - Part 3)

Summary:

Assessment managers must be objective and appropriately qualified

(e) ***Remove section 48(3)*** **- We do not support the broad discretion as to who can be an assessment manager, and a developer being able to choose who will assess their**

particular development - this does not encourage best practice, quality development in Queensland and could easily be abused.

If the discretion to provide for non-prescribed assessment managers is allowed - we suggest that:

- **(s48(3)(b)): a minimum level and type of qualification be prescribed in the Act to ensure the assessment managers are appropriately qualified to make assessment decisions; and**
- **(s48(3)(c)): proponents should not be allowed to choose their assessor. The 'luck of the draw' as to who will assess an application ensures development assessment is as objective as possible and only on the merits; and**
- **a provision should be inserted that provides that an assessment manager must not assess development in which they may have a conflict of interest.**

Assessment managers must be qualified for the job, and objective

Section 48(3) allows a list to be provided as to who can be an assessment manager for assessable development. This is a concerning broad discretion. Assessment managers have significant responsibility as the entity charged with determining whether a development proposal should be allowed to proceed and under what, if any, conditions. Apart from the Court, they are the last stop gatekeepers to protect against poor quality and inappropriate development.

Further, the ability to select your development assessment manager is likely to greatly decrease the objectivity of assessment. Developers are naturally going to choose assessment managers with whom they have a connection of some kind or who they know will be favourable to their development. We do not support this power. As an absolute minimum, and in any case, an assessment manager must not be allowed to assess a development application for which they have any conflict of interest. This is a minimum safeguard which should always apply in planning - but particularly where who can be an assessment manager is broadened.

It is far preferable for all stakeholders that development applications aren't required to go to Court; this proposal may increase the likelihood of an approval being appealed where the objectivity of assessment is reduced.

Hypothetical example of potential impact if 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.

Remove discretions and bring back certainty to public notification requirements:

(f) ***Remove section 53(3)*** **- We do not support the discretion to excuse non-compliance with public notification requirements.** Discretions like these reduce certainty for the community and can be abused where an assessment manager unduly favours a development. The community needs clearly framed, certain processes to provide them with power to ensure that the processes are not being abused, particularly against their favour.

(g) ***Remove section 51(4)(c)*** **– Remove the discretion to excuse non-compliance with development assessment rules.** This discretion provides minimum benefit to developers while reducing certainty for all stakeholders as to how a development will be expected to be assessed. This may in turn affect meaningful consultation.

Public notification provisions must be improved and reinstated to pre-2013 status

Public involvement in decision making should be valued by the development sector and the Government. Better planning decisions are made, with far greater social licence, if the public is given sufficient ability to be involved in the decision making process – this is a win-win outcome for everyone.

(h) ***Maintain section 53*** **- We support that impact/merit development and variation applications must be publically notified and that this right is provided in the Act.**

(i) ***Maintain and improve subsection 54(4)*** **-We support that minimum public notification timeframes are in the Act. However:**

- **we recommend that all rules associated with public notification and development assessment generally be found in the Act to increase clarity and certainty;** and
- **we recommend that public notification timeframes be increased** – development assessors have 20 business days, yet lay people only have a standard 15 business days (and of this – only part time at best) to understand and comment on development applications.

(j) We recommend that the extended public notification requirements for more high impact developments be reintroduced, as was provided by SPA prior to 2012, in schedules 16 and 17 of the *Sustainable Planning Regulation 2009* (see Appendix D). These provisions provided for a minimum of 30 business days for public notification of developments such as those within 100 metres of critical habitat, or large scale tourist resorts. See Appendix D for examples.[12]

[12] Anecdotally, we have mentioned the repeal of these schedules to the Regulation to many members of the Department and Ministerial officers and nearly no one was aware this happened, let alone members of the public. Having provisions in regulations or lower instruments exposes them to easy and stealth amendment - important provisions which protect community rights must be in the Act.

Hypothetical 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.

7. Assessing and deciding development applications (Chapter 3 - Part 3)

REFERRAL AGENCY'S ASSESSMENT

Summary:

(a) We do not support the powerless role of specialist departments in development assessment, and the consequent all-powerful role of SARA. Specialist departments have an important role to play in ensuring development. We recommend specialist departments regain their concurrence agency role.

(b) ***Maintain and improve subsections 63(4)-(7)*** **- We support the integration of a requirement for assessment managers to publish reasons for their decision**. However, for this to be effective in tempering the power of SARA, there must be a specific requirement to publish the departmental advice, and, if SARA does not follow the advice in any way, a specific requirements for SARA's reasons as to why departmental advice was not followed.

(c) To ensure good planning, that is accountable and made on the best available science, we recommend the following:

- Decision makers must be required to not be inconsistent with the State development assessment provisions (SDAP) when making their decisions.[13]
- SARA should be required to follow the advice of technical agencies on particular matters, such as coastal protection, high risk catchments for the Great Barrier Reef and heritage matters.
- Specialist agencies must be given a legislative power to request further information to assist their role in development assessment.

[13] SDAP and the Single Planning Provisions are in urgent need of reform to strengthen environmental protections provided. We have been informed by the Department that this will be undertaken in 2016.

(d) 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.

SARA has significant power under this framework. The SARA framework as it stands provides no legal right to specialist departments to seek further information for a development application, their advice may be ignored, and then the specialist department may be required to ensure compliance. This is not best practice planning and is unfair on specialist departments. The discretion open to SARA to ignore departmental advice and not make decisions in accordance with the SDAP promotes corruption and increases the chance of poor planning.

The role of government departments, such as Department of Environment and Heritage Protection and Department of Natural Resources and Mines, in development assessment is integral to ensure the specialist expertise of these departments is integrated into planning decisions. Planning is a specialist area but it does not cover technical detail around all issues which development may affect - for example it does not cover coastal science, Great Barrier Reef protection or heritage aesthetic. The concurrence agency role previously played by specialist departments provided a check and balance to ensure that all technical knowledge held by the Government was being integrated into planning decisions.

Case examples: the importance of concurrence agency role for specialist departments

Rainbow Shores v Gympie Regional Council & Ors[14]*: This recent decision of the Planning and Environment Court (**P&E Court**) demonstrated the importance of specialist departments maintaining concurrence power. In this case the P&E Court upheld the recommendation of refusal provided by the then Department of Environment and Resource Management in their role as a concurrence agency to a development proposal near Rainbow Beach due to inconsistencies with the State Coastal Management Plan. This case is also an example where public interest community groups effectively participated in the appeal process to uphold the planning instruments and to help protect key environmental values.*

University of Queensland v Brisbane City Council and Cbus Property Brisbane Pty Ltd[15]*: A recent case filed by the University of Queensland further highlights the need for specialist departments to be better integrated into planning decision making. This case was filed due to a 47 story apartment building being approved within the set 25 meter buffer of Customs House, Brisbane CBD. This was contrary to the planning scheme and heritage laws, however was able to be approved as code assessable development without any public consultation. If DEHP heritage specialists had concurrence status or were more involved in planning decision making generally, this would have been unlikely to be allowed.*

[14] *Rainbow Shores v Gympie Regional Council & Ors* [2013] QPEC 26.

[15] *University of Queensland v Brisbane City Council and Cbus Property Brisbane Pty Ltd* [unheard, case number: 4990/15 Planning and Environment Court Brisbane], details available here: http://apps.courts.qld.gov.au/esearching/FileDetails.aspx?Location=BRISB&Court=DISTR&Filenumber=4990/15

***Hypthetical 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.

ASSESSMENT MANAGERS DECISION

Summary:

(e) ***Remove section 60(2)(b)*** **- 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? We strongly oppose the implementation of the presumption in favour of approval in code assessment, as well as the ability for the assessment manager to approve development that does not comply with assessment benchmarks. These proposals degrade the integrity of the planning assessment framework. The examples provided in section 60(2)(b) do not adequately limit the significant discretion provide, which could easily be abused to allow bad development without any safeguards.

We support an accountable and certain approach to development assessment in which each application is assessed objectively.

Hypothetical example of potential impact if not changed:

Danny Developer applies for a code assessable development in the centre 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.

(f) Amend section 60 to not provide a presumption of approval.

(g) Amend section 64 to provide for deemed refusals, rather than deemed approvals.

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 purpose of planning legislation is to provide clear regulations to ensure development is well considered, appropriate, mitigates impacts and is of good quality. Where support should be given to encourage assessment managers to seek out adequate information and to meaningfully consider development applications prior to approval, this Bill instead puts pressure on assessment managers to decide the application as quickly as possible.

Hypothetical example of potential impact if not changed:

Small Regional Council receives a relatively complicated code assessable development application from Danny Does Development Inc. Small Regional Council only has one assessment manager, Larry, and this year has been a busy year – with a number of applications for development being received at the one time. Larry is overwhelmed with work, and realizes he is not going to have enough time to assess Danny's application within the 20 business days specified by the development assessment rules. He contacts Danny to request that they extend the decision time under subclause 46(1) of the development assessment rules. Danny doesn't think his application is that complicated and wants to get his development up as quickly as possible so he can start making money back on it, so he doesn't agree to the extension. Larry is left with a tough choice, but he decides to refuse the application since he just hasn't had time to assess it and he doesn't want it to be deemed approved without proper scrutiny. Danny appeals the refusal to the Planning and Environment Court. The appeal sucks up even more time and resources of Larry and Small Regional Council.

8. Development Assessment Rules (Chaper 3 - Part 4)

(a) We recommend that the development assessment rules be provided in the Act and the IDAS structure from SPA is restored, to provide certainty and clarity in the development assessment process

The development assessment rules, which provide certainty around the process for assessment, including the requirements for how public notification is undertaken, how public submissions are considered, and whether new information from the proponent will trigger re-notification – should be secured in legislation so that changes to them would have a transparent legislative reform process with public and Parliamentary scrutiny. Currently in SPA the development assessment process is neatly and clearly mapped out in the Act through IDAS and the supporting provisions. This works effectively and provides certainty, accountability and transparency of process. We do not understand nor support the move to break up this certainty through removing the clear IDAS process and supporting provisions from the Act.

This Bill allows for the possibility of public notification being undertaken prior to the information stage being completed. We acknowledge that there is discretion available to require re-notification where the assessment manager deems it necessary[16], but discretions are open to abuse. Having the clear structure of IDAS in the Act ensures that public notification is undertaken once all relevant information, according to the assessment manager, is available prior to application being notified. Further, it gives more certainty to the community as to when each stage will occur. We recommend that the clear stages of IDAS be reinstated in the new planning framework.

Hypothetical 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.

9. Minister's powers (Chapter 3 - Part 6)

Summary:

(a) ***Amend section 101*** **- We support the inclusion of the requirement to seek and consider representations prior to the Minister utilising the 'call in' powers. We note that this was not provided in the Private Member Bills introduced to Parliament in June 2015.**

However, we recommend that representations for proposed call in notices be openly sought from the community, as not all interested persons may have made a submission. Representations should be sought from any technical agencies relevant to the development as well.

(b) We do not support the removal of the power of the Minister to make a direction to an applicant, which was provided in SPA. This is a useful power for the Minister to hold to ensure that developers are not abusing this proposed framework **–** which favours developers and puts pressure on assessment managers.

(c) T**he matters surrounding call in notices should be in the Act not the Regulation;** including what is required to be notified and when a call in notice must be given. The Ministerial powers to call in a development are significant and can have a great impact on

[16] Draft development assessment rules, subclause 39.1.

development; there must be the ultimate in transparency and certainty around how these powers can be exercised.

10. Infrastructure (Chapter 4)

Summary:

(a) We recommend that the use of infrastructure charges for 'green infrastructure' be widened to include the maintenance of biodiversity and other ecological processes and environmental values.

(b) We recommend that the 'cap' on infrastructure charges should be removed, and rather either a standard or minimum amount be provided, to ensure adequate infrastructure charges are being obtained for developments. This will ensure taxpayer funds are not used to make up the difference.

The definition of 'development infrastructure' lists parks, parkland, cycle ways and other community facilities. This reduces the ability to use infrastructure charges to only highly manicured environmental features. We recommend that the definition of development infrastructure is extended to include infrastructure to support more natural environmental values, such as the maintenance of biodiversity. These charges could be used, for instance, for developing wildlife connections over motorways, purchasing land for protection that contains integral habitat for species and detection and prevention of spread of disease through flora and fauna populations.

The Local Government Association of Queensland (**LGAQ**) has provided significant material which explains that infrastructure charges are currently far less than what is required to provide necessary infrastructure.[17] LGAQ explain that the maximum cap on infrastructure charges chargeable by local governments has apparently led to many councils achieving only approximately a 70% of cost recovery.[18] In light of this, we recommend that infrastructure charges are not capped, and instead a minimum or set amount is provided for each development type. This will ensure that adequate funds are obtained through development proponents who will profit from the development they provide.

11. Offences and enforcement (Chapter 5)

ENFORCEMENT ORDERS IN P&E COURT (Chapter 5 - Part 5)

(a) **We support the maintenance of third party rights to seek enforcement orders (s178)** – this right provides a useful 'watchdog' role for the community where the local or State government may not have the inclination or resources to undertake enforcement action.

[17] Local Government Association of Queensland, *Discussion paper: infrastructure planning and charging framework review* (August 2013).
[18] Local Government Association of Queensland, Infrastructure charges: myth busters, http://lgaq.asn.au/documents/10136/fc2740d8-2c4a-42fb-b65d-b8d2482be42e.

MISCELLANEOUS (Chapter 5 - Part 9)

(b) We support the maintenance of the offence of providing false or misleading information (s224) – this assists in ensuring the integrity of information provided to decision makers.

12. Dispute resolution (Chapter 6)

APPEAL RIGHTS (Chapter 6 - Part 2)

(a) We support the provision of development appeal rights for submitters in the Act.

(b) We support that an 'eligible submitter' can join as a co-respondent to a development appeal. This was not provided in the Private Member's Bill.

As stated by ICAC NSW '[m]erit appeals provide a safeguard against biased decision-making by consent authorities and enhance the accountability of these authorities. The extension of third party merit appeals acts as a disincentive for corrupt decision-making by consent authorities.'[19] It is essential that these rights are enshrined and clearly provided for in the Act.

13. Miscellaneous (Chapter 7)

PUBLIC ACCESS TO DOCUMENTS (Chapter 7 - Part 3)

(a) To truly ensure 'open access to planning and development information'[20] provisions enabling access to information should be given strength in the legislation, not hidden in rules that can be changed without any Parliamentary or public scrutiny.

(b) As mentioned above, the advice of technical agencies should be required to be made publically available, along with the provision of reasons for not following the advice.

Easy and certain access to information by the community is the foundation of transparent, accountable and open governance. Development affects everyone in the community. Therefore there should be a presumption of making all documentation relevant to a development application, or new or amended instruments, easily available to the community on principle.

Changes to regulations happen frequently – the purpose of regulations is that they contain technical detail that can be easily changed. Important rules around the public's ability to access all relevant, specified documents must be provided in the Act for certainty – as they are in SPA.

14. Ensuring our planning framework protects the Reef

Our planning laws impact on the health of our Great Barrier Reef (**Reef**). Our Reef has had international attention due to its declining health and consequent concern that it was not being

[19] ICAC, *Anti-corruption safeguards and the NSW planning system*, February 2012

[20] Department of Infrastructure, Local Government and Planning, *Better Planning for Queensland: next steps in planning reform directions paper* (May 2015), p.8.

appropriately managed. This concern led to a threat of affecting the World Heritage status of our Reef. Various intergovernmental studies reviewing the health of the Reef and current management practices culminated in the Queensland and Commonwealth governments agreeing to commit to take strong actions to improve management of impacts to the Reef. The key agreement reflecting these commitments is the Reef 2050 Long-Term Sustainability Plan (**Reef 2050 Plan**).

The issues raised here relate to concerns that the commitments made by the Queensland government in the Reef 2050 Plan that relate to planning are not being met by this planning framework. In summary these concerns are:

(a) The Outstanding Universal Value of the Reef World Heritage Area has not been maintained as a 'central concept' in Queensland's planning system under this framework.

(b) Non-port dredging and dumping impacts have not been captured by this framework.

(c) Coastal development regulation is relatively weak with no further signs of improvement.

(d) More work could be undertaken in this framework to reduce agricultural runoff through better planning.

If the Queensland government is serious about meeting its commitment to take strong action to protect our Reef, we ask that the Committee recommend that these matters be addressed in the planning framework prior to being passed.

(a) Outstanding Universal Value of the Reef World Heritage Area must be a 'central concept' in Queensland planning system

The Reef 2050 Plan states that Queensland has made the 'Outstanding Universal Value of the Great Barrier Reef World Heritage Area a central concept in the Australian and Queensland governments' environmental legislation and planning systems'. Further stating specifically that '*Queensland's planning policy and environmental decision-making system now require explicit consideration of matters protected under Australia's national environment law (including the Outstanding Universal Value of world heritage properties)*'.

The State Planning Policy provides that matters of national environmental significance (**MNES**) under the EPBC Act are a State interest of 'biodiversity'; consequently world heritage MNES must be considered in Queensland planning. Nowhere further in the draft planning framework are matters of national environmental significance mentioned, nor is there mention directly anywhere of Outstanding Universal Values (**OUV**) of the Reef. There is also not specific detailed guidance as to how matters of OUV are to be integrated into Queensland planning decision making.

The OUV of the Reef cannot therefore be said to be a 'central concept' in our planning framework. It is merely a consideration among many considerations that must be referred to in planning schemes, with no strong guidance as to how it should be protected.

Impacts to the Reef are complex and can occur throughout many different areas of Queensland and elements planning decision making. Clear, detailed guidance should be given as to how matters of OUV are required to be considered in planning decision making for it to truly be considered a 'central concept' in the Queensland planning system.

(b) Non-port development to be captured by planning framework

In the current government's pre-election commitment document 'Saving the Great Barrier Reef: Labor's plan to protect a natural wonder' (**Labor's Reef Policy**), the government committed to: 'ban the sea dumping of capital dredge spoil within the Great Barrier Reef World Heritage Area'.[21] This commitment is not specific to port related development, it is for all capital dredge spoil.

We understand from comments made to us by Queensland government departmental staff working on the *Sustainable Ports Development Bill 2015*, that the method for banning sea dumping of capital dredge spoil from non-port developments will be dealt with through the new planning framework. There are no provisions provided in the draft planning framework which provide regulations as to non-port capital dredge material disposal. We are still unclear as to how this commitment will be met through the new framework; we look forward to clarification of this.

(c) Coastal development regulation weak with no signs of improvement.

Under Labor's Reef Policy, the current Government committed to:

> *'reinstate world-class coastal planning laws to ensure the Great Barrier Reef is not adversely affected by development along our coastline. Our coastal planning laws will be based on the best available science, make allowances for expected sea level rise and protect ecologically important areas like wetlands, and will prohibit new development in high-hazard greenfield sites.'*.[22]

We congratulate the Government on returning predicted sea level rise of 0.8m to Queensland's Coastal Hazard Area maps. We are not aware of any further initiatives being planned to 'reinstate' Queensland's coastal planning laws. We are concerned that the current regulation of coastal development is inadequate to truly protect the Reef from adverse development impacts.

As mentioned above in section 7, the role of the specialist coastal planning staff in the DEHP has been significantly reduced in planning decision making through the removal of their concurrence agency status. We have not had any confirmation from DILGP staff that SARA will be resourced with the same expertise to ensure that coastal planning specialists are contributing to coastal development decision making. Further, we understand that while

[21] ALP Queensland, '*Saving the Great Barrier Reef: Labor's plan to protect a natural wonder'* p.4.
[22] ALP Queensland, '*Saving the Great Barrier Reef: Labor's plan to protect a natural wonder'* p.9.

DEHP no longer has concurrence agency status, they are still the enforcement body for coastal development. They are therefore effectively being required to enforce development approvals that they may not think adequately meet their specialist standards. This is an awkward and illogical position for DEHP.

Ideally, the Office of the Great Barrier Reef and/or the GBRMPA should be given concurrence agency status for matters which occur in highly sensitive Reef catchments by reference to the Blue Maps prepared by GBRMPA. These offices have significant expertise and knowledge in how we can protect the Reef. Integrating them into planning decision making will be a significant step forward in coordinating government departments to work together for the betterment of Queensland, and to ensure government offices are not working at cross purposes.

Further, we recommend that the SDAP Module 10 on coastal protection be amended to require specific consideration of impacts to OUV of the Reef as well as development impacts to Reef Catchments.

(d) Reducing agricultural runoff through planning framework

Agricultural runoff is one of the key threats to the Reef. Providing strong planning and development regulations can help ameliorate the impacts of agricultural runoff in Reef catchments. The Queensland Government made numerous commitments to ensure that agricultural runoff to the Reef is reduced in the Reef 2050 Plan.[23]

Some outcomes that could be provided in the new planning legislation to effect commitments made in the Reef 2050 Plan to reduce agricultural runoff include:

- providing a standard development trigger across all catchments which flow to the Great Barrier Reef to ensure that proposed new agricultural development and intensification are assessed;
- for agricultural development/intensification, providing a requirement for any increases in pollution to be fully addressed – and measures established so that a net benefit for the Great Barrier Reef is achieved; and
- providing specific provisions and processes to assess cumulative impact and ensure a net

[23] WQT1: By 2018:
- at least a 50 per cent reduction in anthropogenic end-of-catchment dissolved inorganic nitrogen loads in priority areas, on the way to achieving up to an 80 per cent reduction in nitrogen by 2025
- at least a 20 per cent reduction in anthropogenic end-of-catchment loads of sediment in priority areas, on the way to achieving up to a 50 per cent reduction by 2025

EHA8: Develop a net benefit policy to restore ecosystem health, improve the condition of values and manage financial contributions to that recovery.
EHA19: Develop guidelines for assessing cumulative impacts (including climate change pressures) on matters of national environmental significance including ecosystem and heritage values in the World Heritage Area.
EBT3: Cumulative impacts on the Reef from human activities are understood and measures to ensure a net environmental benefit approach for the Reef are in place.
EHT4: Key direct human-related activities are managed to reduce cumulative impacts and achieve a net benefit for the Reef

benefit is achieved across all developments. This could be achieved through State planning instruments – through regional planning consideration of cumulative Reef impacts, as well as through improved SDAPs which require consideration of cumulative impacts and achievement of net benefit to the Reef.

The impacts to our Reef are complex and stem from a diverse range of causes across Queensland geographical and regulatory areas. To ensure effective actions are taken to improve the health of our Reef, it is necessary that our planning framework incorporates and integrates with the broader work occurring to reduce the impacts on our Reef.

APPENDIX B

Submissions Government Court Bill

1. COSTS

Costs in P&E Court Proceedings

(a) ***Maintain section 59*** **- We support the reinstatement of the general rule that each party pays their own costs.**

(b) ***Maintain section 61(1)*****- We also support that the rule that each party pays their own costs has not been extended to enforcement orders.**

Reinstatement of the rule that each party pays their own costs is integral to ensure that the community is not further impeded from utilising their submission and appeal rights under the Act. While the orders of the Court may not have substantially changed since the cost rules were amended to remove the 'own party costs' rule, it is not possible to quantify how many community members have not participated in a development appeal due to a notional fear that costs may be awarded against them.

This fear cannot be overstated – the remote possibility of receiving an adverse costs order is a significant disincentive to community groups who are not well resourced to stand up for their concerns in Court. EDO Qld is consistently being advised by community members that they have decided not to go ahead with a potential planning appeal due to a fear of an adverse costs order, even were they frequently have good grounds to do so. The greater the discretion to award costs, the greater the deterrent for community litigants to participate in planning appeals.

APPENDIX C

Submissions - Government Consequential Amendments Bills

***Coastal Protection and Management Act 1995* (Qld) (Coastal Act)**

- ***Maintain clause 145* – Amendments to Coastal Act to provide power for DEHP to require land surrender in the coastal management district, in an erosion prone area or within 40m of the foreshore.**

We support the provision of the ability to require that a proponent surrender land. This is a beneficial power to ensure that development and infrastructure is not put at risk by rising sea levels. This is one step forward to achieving more appropriate involvement of specialist departments in planning decision making.

We note that it appears the Amendment Bill repeals the section stating that compensation cannot be sought for land surrender directions, which currently appears in the Coastal Act. We do not support the ability to seek compensation for land surrender directions. This is an unnecessary use of taxpayer money.

***Queensland Heritage Act 1992* (Qld) (Heritage Act)**

- **The Consequential Amendment Bill be amended to provide the Heritage Council with the power to interfere with development application decision making where a development impacts on Queensland heritage listed places.**

The Heritage Council is a specialist unit with the required knowledge and expertise to make appropriate decisions to protect our heritage places. This specialist unit should be respected, empowered and integrated into planning decision making.

***Nature Conservation Act 1992* (Qld) (NCA)**

- ***Remove clause 326*** – **Repealing section 106 NCA – which provided that interim conservation orders prevail over a planning scheme.**
- ***Remove clause 327* – Repealing section 122 NCA – which provided that conservation plans, or regulations giving effect to a management plan, prevail over a planning scheme.**

The explanatory notes state that these sections of the NCA are being omitted because they are redundant provisions, since both the NCA instruments and planning schemes must be complied with.

The NCA should prevail over a planning scheme in general, as it deals with matters of state significance. It is foreseeable that there may be a conflict between a planning scheme and these NCA instruments. These provisions therefore provided clarity in the case of a local government planning scheme conflicted with an NCA interim conservation order or plan, and therefore should be maintained.

APPENDIX D:

Sustainable Planning Regulation 2009 (Qld) - Reprint 4A effective 14 December 2012

Excerpted – Schedules 16 and 17

Schedule 16
Development for which a notification period of at least 30 business days applies—purposes
section 17

A material change of use, assessable against a planning scheme, temporary local planning instrument, master plan or preliminary approval to which section 242 of the Act applies, for any of the following—

(a) an aerodrome that is, or is proposed to be, used by commercial operators not normally living at the premises;

(b) a large outdoor sport and recreation facility including, for example, a golf course, a major sporting venue and a racing circuit, but not including a golf course of 30ha or less or a golf driving range;

(c) a tourist resort complex—

(i) with accommodation for more than 1000 people, including staff; or

(ii) on an offshore island;

(d) a body of water (including an artificial lake but excluding an effluent pond or the like), that has, or would have after the change of use, a total surface area of more than 5000m2.

Schedule 17
Development for which a notification period of at least 30 business days applies—areas

section 17

A material change of use (other than for a dwelling house, outbuilding or farm building) assessable against a planning scheme, temporary local planning instrument, master plan or preliminary approval to which section 242 of the Act applies,

or reconfiguring a lot, if the premises—

(a) are completely or partly below a floodline adopted by the local government and the development involves filling an area greater than 5000m2 below the floodline; or

(b) share a common boundary with a Queensland heritage place; or

(c) contain or share a common boundary with or are within

100m of the boundary of—

(i) an area that is a critical habitat, a protected area, subject to a conservation agreement or an area of major interest under the Nature Conservation Act 1992; or

(ii) the wet tropics area under the Wet Tropics World Heritage Protection and Management Act 1993; or

(iii) a fish habitat under the Fisheries Act, if the proposed development—

(A) has impact on riparian vegetation; or
(B) results in alteration of natural flow patterns;or
(C) requires the construction of a levee; or
(D) does not contain stormwater management; or
(E) allows contaminated runoff; or
(F) disturbs instream habitat; or
(G) requires drainage of the fish habitat; or

(d) contain or share a common boundary with a wetland management area or a wetland protection area.