Submission No. 112
11.1.13

18 January 2016

Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
Brisbane Qld 4000

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

Dear Mr Chair and Committee Members

The Spring Hill Community Group (SHCG) welcomes the opportunity to make a submission on the proposed planning frameworks tabled in Parliament by the Government and the Private Member Tim Nicholls.

The SHCG firmly believes that government decisions must be based on strong evidence, that they must not compromise the long-term liveability of the community, and that they must maximise benefits for people and the environment over profit. The SHCG works hard to inform planning and development decisions, so that they:

- Reflect real community needs through genuine, effective consultation.
- Deliver smarter designs and clever developments that value the communities they exist within and which help our people to be healthy and active.
- Keep and grow our parks and community places.
- Ensure essential supporting infrastructure is able to meet the needs of an expanding local community.
- Protect places of cultural, heritage and environmental value.

The SHCG considers that an independent advisory body should be established to inform the development of State, Regional and Local plans and development decisions.

- The advisory body would draw on relevant expertise from government, business and academic fields, and would be fundamentally guided by peak community groups to ensure local level cultural and environmental values are embedded within these plans and decisions.
- The establishment of this advisory body should occur prior to the consideration of any draft Planning Bills, so that it can inform the development of the reformed planning legislation to ensure communities are prioritised rather than strong lobbyists.

Getting the Purpose of the Act Right

- The SHCG considers good community oriented development to be an important and necessary feature of a thriving centre. To achieve this, genuine consultation must be at the centre of planning and development decisions as well as a thorough application of ecologically sustainable development (ESD) principles. The principles of ESD as defined in the Commonwealth *EPBC Act* are as follows:
    - *decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;*

- *if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;*
- *the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;*
- *the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;*
- *improved valuation, pricing and incentive mechanisms should be promoted.*

- Applying the principles of ESD helps to position the economy in balance with all the elements that actually help to underpin a healthy, thriving and prosperous community over the long term. It should not be watered down through an absence of a definition.
- It is recommended that the term ESD, and its principles, be explicitly defined within the Purpose of the Act to ensure it is properly considered in planning and development decisions.
- It is further recommended that the Purpose of the Act articulate the requirement for investigation, assessment and consideration of the impacts that an existing or proposed activity are likely to have upon the environment in order to ensure that the protection of the environment is properly considered in the context of section 3(1), where impacts can be direct or indirect, short or long-term, temporary or permanent, or of a local, regional, national or global nature, where and 'activity' includes the use of any natural resource for any purpose and the discharge or release of any substance likely to pollute, contaminate or change the composition of the environment.

Improving Community Consultation and Transparency

- The draft Planning Bills as they currently stand do not improve community participation, nor do they improve in any way heritage or environmental protection.
- The SHCG considers the timeframes around the writing and consultation on the current draft Planning Acts to have been fast-tracked and inadequate for proper consultation to occur.
- The current Draft Planning Acts are perceived by the people of this community to be, primarily, a rebranding of the Bills tabled by the opposition LNP. The opposition LNP's draft Bills, Planning for Prosperity, are regarded by many as the 'Property Council Act'.
- The Property Council's ability to influence both current and previous governments is noteworthy. In determining when Parliament should consider the current government's draft Bills, the community seeks to understand why the Property Council was able to influence Parliament to deliver such a truncated process.
- As a result, the consultation period for the current government's draft Bills has been insufficient for what is a complex, time consuming task. This expedited process has not served the broader interests of the community.
- As Queensland's representative assembly, Parliament is required to represent all the State's citizens via their elected members and provide the forum for the scrutiny of Bills such as the draft Planning Bills.
- In order to do this properly, the people of Queensland must be given the opportunity to properly inform the draft that will ultimately be debated in Parliament.
- It is also of concern that much of the detail previously included in the Sustainable Planning Act, that aimed to provide greater clarity and direction, has been shifted within regulations. Amendments to regulations do not require changes to a Parliamentary Act and are therefore less able to be scrutinised by the public. A step in this direction further weakens the public's ability to be heard over the penetrating influence of strong, wealthy lobby groups.

- The Bill reduces public consultation timeframes for development compared to that provided under SPA prior to changes made by the Newman Government in 2013. Prior to 2013 complex developments[1] and those contained in *Sustainable Planning Regulation 2009* schedules 16 and 17 provided for minimum 30 business day consultation on particular of concern development (these included development such as large tourist resorts and golf courses, and development within 100m of critical habitat, protected areas, the wet tropics or wetlands). These extended public consultation provisions should be returned for developments that are complex enough to have required 3+ concurrence agencies previously, and those contained in the previous schedules. A new trigger is required for larger and complex developments in the absence of the previous mechanisms. **The repeal of the SPR schedules 16 and 17 in 2013, which went unnoticed by many, is a perfect example of why it is far preferable that these provisions must be in the Act and not in regulations.**
- The SHCG does not support a discretion being available to excuse non-compliance with public notification procedures, nor to provide exemptions from assessment through exemption certificates. Discretions like this get abused under bad governance.
- The SHCG does not support the timing of public notification being discretionary and potentially occurring prior to the information stage. This discretion is a small favour to developers at a big cost to community involvement in decision making by diminishing certainty that the public will have all available information when providing their submissions.
- The legislation must clearly require non-minor changes to development applications to trigger re-notification if the change is likely to attract submissions. The SHCG does not support provisions allowing developers to be able to make major changes to development without further public notification.
- All laws directing public consultation on development should be in the one place and subject to public and Parliamentary scrutiny, not hidden away in rules and regulations. The Development Assessment Rules contain provisions which confuse the public notification times provided in the Bill; for example by allowing re-notification of development applications for only 10 business days. Further, regulations to ensure meaningful consultation, such as simply that public consultation not be undertaken from 20 December to 5 January (now in the Development Assessment Rules), can slip away easily while no one is watching.
- The Development Assessment Rules – which provide certainty around the process for assessment, including the requirements for public notification of development, 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.
- The SHCG opposes the implementation of the presumption in favour of approval in standard/code assessment, as well as the ability for the assessment manager to approve development that does not comply with assessment benchmarks, as outlined in Option 1. These proposals degrade the integrity of the planning assessment framework. The example provided in Option 1(3) does not adequately limit the significant discretion provided in (3) which could easily be abused to allow bad development without any safeguards. We support the use of Option 2 in the Bill which provides an accountable and certain approach to development assessment.
- With regard to transitional provisions for standard/code assessment (p.256): A development application should be assessed under the code which was chosen as appropriate at the time of applying – to ensure certainty in assessment.

[1] Development requiring 3 or more concurrence agencies – see *Sustainable Planning Act 2009* (Qld) at 22 November 2012, section 298 at 22 November 2012.

Concurrence Powers and the State Assessment and Referral Agency (SARA)

- There are no mechanisms under which SARA is compelled to resolve a development decision on the basis of technical advice provided by other Departments, such as the Department of Natural Resources and Mines (DNRM) with regard to vegetation management and the Department of Environment and Heritage Protection (EHP), especially regarding heritage.
- The SHCG recommends that the Government either reinstate the concurrence power of the Department of Environment and Heritage Protection (EHP), or implement a new mechanism to ensure technical advice and preliminary approval is first sought by an applicant through DNRM and EHP – whether on vegetation management, heritage or environmental matters – before their application can proceed to SARA for assessment.
- It is also recommended that SARA be required to publically notify its decisions on development applications, and provide reasons for those decisions, to promote an open and accountable decision-making system.

Planning and Environment Court – Cost Provisions

- There are already significant barriers in place that prevent community individuals or groups taking action against a development decision or outcome. The risk of 'cost orders' creates yet another substantial deterrent against community involvement in planning and development decision making.
- The SHCG acknowledge and welcome the move to reinstate the cost provisions for impact assessable development applications in relation to the Planning and Environment Court, where each party bears its own costs providing proceedings are not started for an 'improper purpose' or considered frivolous or vexatious by the court.
- However, the SHCG strongly recommends that the previous costs rule in relation to enforcement orders also be reinstated to ensure communities are not further dissuaded from taking action.

New Development Tribunal – further investigation required

- According to the document *Draft Planning: A Snapshot*, it would seem that this is not a 'new' Tribunal but is instead a rename of the existing Building and Development Dispute Resolution Committee.
- The SHCG supports the introduction of a genuine Tribunal system that aims to resolve disputes and further facilitate the use of alternative dispute resolution processes before a matter progresses to the Planning and Environment Court.
- Proceeding to the Planning and Environment Court should be a last resort.
- While the draft Planning Bill 2015 will replace the Building and Development Dispute Resolution Committee with the Development Tribunal through a rename, it is not clear what matters will be heard by the newly named committee nor what the triggers for lodging an application to the tribunal will be. Indeed, it is not clear whether there will be any change at all to the substantive nature and function of the existing Committee.
- The SHCG considers it essential to introduce an effective Tribunal system that considers facts and local community values and expectations, and which adopts a similar model to that applied by the South Australian and Victorian Tribunals, as well as internationally with the American Oregon Land Use Board of Appeals and the United Kingdom's Planning Inspectors.
- The SHCG also seeks to identify what the fee charge will be to community groups or individuals who wish to lodge an application to the 'new' Tribunal.

Climate Change

- The push by local and state governments for heightened density of the local built environment and CBD, will place growing pressure on the existing Spring Hill community, particularly in the context of

increasing temperatures and heat island, extreme weather events, accessing renewable energy opportunities, and achieving sustainable design without impinging on others.

- It is therefore recommended that the Planning Bill take into full account climate change adaptation and mitigation in planning and development decisions in order to properly consider the causes and consequences of climate change, by clearly and explicitly articulating both elements in the Purpose of the Act.

Deciding Development Applications

- The SHCG does not support approving developments outside the prescribed assessment conditions as the default position. The development industry is already pushing developments beyond what is acceptable to the local community, and this would create further incentive to operate this way.
- The introduction of *Non Appealable Decisions* is of great to concern to the local community as it is unclear what practical effect this provision will have on appeal rights for people already struggling to be heard.

Development Assessment Rules

- The community is concerned that they have had insufficient time to fully understand what changes to this section of the draft Planning Bills will mean on the ground.
- The use and application of exemption certificates, assessment benchmarks and categorising instruments would appear at the surface to reduce the opportunity for local input.
- There are deep concerns around the possible further erosion of locally driven decision making if these changes are applied. Already development decisions are made that are not in keeping with local community expectations. Any further restriction on the ability of community members to contribute to development outcomes would seem contrary to the current purpose which highlights
- Recommend additional time be granted for community groups to engage in more effective consultation on the draft Bills.
- Exemptions from notification requirements and objection opportunities for *Code Assessable* and *Bounded Assessable* applications should be limited to minor proposals for developments of less than 10% volume, that would be located behind the current building line.

Impact Assessment

- Recent court rulings have highlighted that the word 'intent' when it is used within a Plan holds no weight (*Kangaroo Point Residents Assn v BCC and Metro Lambert Street P/L*). This is an issue that can also be applied to other terms within Local Plans, for example 'bulk'.
- In order to reduce confusion within the community and the development sector, greater clarity needs to be provided in the final Planning Bills. In this respect, 'mandatory parameters' must be included within the requirements of planning.
- SHCG strongly recommends that provisions in the final Bills clearly define how *Impact Assessable* applications are treated to ensure planning instruments cannot be avoided. This can be achieved through a tightening of terminology and definitions, and the inclusion of *mandatory parameters*.
- The SHCG was uncertain what the change in terms would mean under categories of assessment: merit OR impact / standard OR code (p.56), and consequently the SHCG supports the retention of the terms currently used in *Sustainable Planning Act* – impact and code development. The changes to the development assessment framework in the planning bill do not appear substantial enough to warrant changing the terms, and find that changing the terms unnecessarily confusing.

Performance indicators should be implemented through our planning framework

- The SHCG considers performance indicators essential in helping to guide and assess the effectiveness of planning decisions, particularly with respect to providing protections for biodiversity, and social health and wellbeing.
- Insufficient guidance is provided to ensure these issues are effectively integrated into planning instruments, with no requirement for performance indicators to support achievement of meaningful performance indicators and their review.
- The SHCG supports the maintenance of 'core elements' in planning schemes and the implementation of meaningful performance indicators to guide strategic outcomes and desired regional outcomes being required in regional instruments.

Amending Local Government Planning Schemes

- Local Plans should be required to include proposals and site designations for necessary parkland, social and physical infrastructure provisions for related development proposals, particularly where there is increasing density.

Compensating Property Speculators – Inherently unfair and unjustified

- The SHCG contends that there is no justification for compensating prospective developers where planning decisions are made on the basis of expert scientific advice and with the best, long term interests of local communities as the priority. This includes considering climate change impacts, ecosystem services, social, cultural and environmental value.
- Failing small businesses are not afforded the same tax/ratepayer bail out for changed conditions, and therefore it is a gross injustice to apply this rule to developers. Allowing compensatory provisions sets up the perverse outcome, where developers can essentially hold to ransom Local Governments to deliver outcomes they want, regardless of the short and long term impacts to people, place, and local economy.

Please note that additional comments have been incorporated below from the Brisbane Residents United submission and the Environmental Defenders Office submission.

While the current government's proposed Planning Bills are an improvement on the Private Member Bills, they still fall short. Both still favour developer rights over that of the community and both have failed to ensure sufficient community engagement safety nets have been incorporated.

At a minimum, the government's proposed legislation 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. While we appreciate the proposed Private Member legislation is to be considered by Parliament as part of this process, we consider this particular draft to be regressive as it proposes a planning process that syphons much of the content of the Planning Act into supporting instruments. These instruments have not been made available for public view and therefore we are unable to fully judge the effect of these proposed bills.

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 government's Planning and Environment Court bill is preferred to the Private Member's bill governing the operation of the Planning and Environment Court because the government bill allows for costs rules which allow more discretion for costs against community groups when they take legal action. This facilitates greater community involvement in important issues to the community – allowing for a higher level of participation in planning issues which impact on their quality of life.

We are deeply concerned that 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 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.

The overriding of local planning codes is a significant issue for our community. The impacts to the heritage value of Customs House as a result of a Brisbane City Council development approval being a case in point.

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 SARA.

We endorse the submission prepared by the Environmental Defender's Office (EDO), Queensland, particularly the proposal that the Private Member's Bills should not be passed. We also support with EDO's comment that the legislative framework creates uncertainty about what the legislation is, where to look for it and when it might be changed.

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.

The SHCG considers this a critical opportunity to achieve outcomes for the community, and we ask that this submission be taken on board in the finalisation of the draft Planning Bills. We also request the opportunity to appear before the Committee, to speak to the issues that are important to our members.

Yours sincerely

Kirsten Lovejoy
Spokesperson
Spring Hill Community Group