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BRISBANE REGION ENVIRONMENT COUNCIL
PO BOX 479 MORNINGSIDE 4170

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The 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. Chairman and Committee Members

Submissions to Government and Private Member Planning Bills 2015

Thanks for the opportunity to make submissions on the proposed planning Bills

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**) but are ALL are largely inferior to the S.P.A. 2009.

BREC. POINTS to the scorecard prepared by the Environmental Defenders Office Qld. and Queensland Conservation Council[1]

The Private Member planning framework is far inferior to the Government planning framework, because it:

- moves the substance of the planning framework into the supporting instruments– as does the Government planning framework - yet no supporting instruments have been provided by the Private Member to assess their adequacy. We do not support the changesin both frameworks to demote much of the contents of the Planning Act to supporting instruments – this creates uncertainty for all stakeholders and the AND THE TOTAL 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 what is being proposed.
- does not adequately provide for ecologically sustainable development (**ESD**) as a key purpose of the Planning Bill; no definitions or explanations are provided for ESD nor is there a requirement to advance the purpose of the Act. ESD is an essential component of any planning framework and, as it is

[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

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not an intuitive term, it must be supported by sufficiently detailed definition to guide its implementation.

- hinders community participation - through providing costs rules which allow more discretion for costs against community groups in planning appeals, no specifications in the Act as to minimum time frames for public consultation on development applications, no detail in the Act as to what information is required to be publicly accessible, and no requirement for the Minister to consult prior to calling in a development application.
- provides no checks and balances on 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. While the Government Planning Bill has introduced some measures to temper the monopoly decision making role SARA now has, including requiring reasons to be provided for decisions made by the assessment manager, the Private Member's bills provide nothing to avoid SARA ignoring the advice of specialist departments.

Our environment needs strong protection

The recent Outlook Report on our Great Barrier Reef confirms that the status of our prized Great Barrier Reef, which suffers from the emissions from all of our land uses throughout Reef catchments, is 'poor' and getting worse.[2]

Further, the most recent State of the Environment Report in 2011 states that: *'[i]ntensification of land use and long-term changes in climate remain the most significant factors causing land degradation in Queensland*.'[3] The Report provides the following indications that our biodiversity is at risk:

- Koala populations, for which a multitude of regulations have been made to assist their protection over decades, have suffered a 68 per cent decline between 1996–1999 and the latest reported survey in 2010; *There is no monitoring of Tipping Point Populations . Various experts have called for Qld Endangered status.and HV Regrowth constitutes half its SEQ habitat (BREC) It is Rafferties rules in Ipswich, Redlands, Gold Coast and Brisbane*
- 'There are 90 regional ecosystems classed as 'endangered', 532 identified as 'of concern' and 764 listed as 'least concern'' under the *Vegetation Management Act 1999* (Qld).[4] *but the VMA is gutted , landclearing has*

[2] Great Barrier Reef Marine Park Authority 2014, Great Barrier Reef Outlook Report 2014, available here: http://www.gbrmpa.gov.au/cdn/2014/GBRMPA-Outlook-Report-2014/

[3] Queensland Government, '*State of the Environment Report'* (2011), available here: http://www.ehp.qld.gov.au/state-of-the-environment/report-2011/pdf/executive-summary.pdf

[4] Ibid, p.ix.

rocketed to 300,000ha/yr(SLATS), half the freehold rainforest is not protected and 3 million hectares of high value regrowth is not protected(BREC& SEQC)

- Only approximately 5.01 per cent of Queensland is included in protected areas; considering the superlative features of our State's environment, this figure is very low.[5] *Brisbane City Council has removed bushland contributions and has taken $ instead.*

Strong, well drafted planning laws are needed to ;prevent clearing of Essential Habitat, Urban Remnant s using the exemption, and using the VMA to gazump Local Veg Laws and Planning Schemes protections.

umanage smart and sustainable development are essential to ensure Queensland has a healthy, clean environment now and for future generations.

<u>We suggest that the Committee recommend the following:</u>

1. **The planning bills introduced by Private Member Tim Nicholls *not*be passed.**
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.[6] 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.[7] 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 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)*** – this ensures that community groups are not hindered from participating in development appeals or enforcement actions for fear of receiving a costs order against them.

[5] Ibid.
[6] Ibid, p.x.
[7] 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

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

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

<u>Protecting nature</u>

(a) ***Provide for a requirement for SARA to follow the advice of certain specialist departments*** EHP, DNR, Fisheries– whereas previously the assessment manager would be required to comply with the advice of a specialist concurrence agency on matters within their jurisdiction, SARA has been provided with a monopoly to decide development applications. This is inappropriate for certain matters which may involve significant impacts to matters concerning specialist departments, such as matters impacting highly sensitive areas of the Great Barrier Reef, coastal zones, cultural heritage or vulnerable vegetation communities and Essential Habitat
SARA is not resourced with specialists in these areas and is therefore not appropriate to make the final decision in all circumstances. By nature, SARA is likely to make pro-development decisions for shorter term benefit, compared to those departments with specialist knowledge in areas development may impact. Concurrence agency power for specialist departments and veto powers assists in balancing the imbalance of power caused by SARA holding the biassed final decision on planning matters.

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. This will provide a higher level of integration of specialist knowledge and collaboration through decision making. This will also rectify the incongruence that results whereby a development is approved/ conditioned by SARA in a way that does not comply with the recommendations of a specialist department, but the specialist department is still required to undertake compliance and enforcement action for the resulting development conditions, as occurs presently.

(b) ***Insert a requirement to consider both mitigation and adaptation to climate change***. Currently the Government Planning Bill only requires consideration of how climate change can be mitigated (section 3(3)(c)(iv)).

Adaptation to climate change should also be a key consideration in planning legislation.

(c) ***Implement performance indicators into our planning framework –*** this is essential to help guide and assess the effectiveness of planning decisions, particularly with respect to providing protections for biodiversity. The performance of the planning framework should be measured against ecological baseline conditions, an understanding of which is necessary to inform planning reform. State of the Environment Reports could be used for this purpose, as the next report is now overdue. State of the Region Reports for regional plans need to have meaningful performance indicators and be released in a timely fashion in advance of plan revisions to inform regional communities and foster debate.

Community involvement in decision making

(d) ***Specify in the Act when an increased public notification period should be required, as provided for in section 53(4)(b)(ii) of the Planning Bill*** – a schedule should be provided for in the Planning Bill which specifies a minimum of 30 business days for high concern development, as was previously provided in the Sustainable Planning Regulation 2009 Schedules 16 and 17. We are pleased to see the insertion of ss53(4)(b)(ii) which may expand when public notification can occur for certain development – however this does not specify the 30 business days originally provided in SPA, and further, would be far better improved if the high impact development was provided for in a schedule to the Act itself, with a capability to add to this list in regulations.

Accountable, transparent and certain decision making

(e) ***Remove section 45(4) which states that code assessable development need not be assessed in accordance with the purpose of the Act.*** Increasingly development is being categorised as code assessable – by including this provision the purpose of the Planning Bill becomes irrelevant for a significant number of developments, and our environment suffers.

(f) ***Remove section 60(2)(b) from the Planning Bill - whichprovides 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?

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

(h) ***Remove section 46 of the Planning Bill - which provides the discretion to provide exemption certificates from development assessment.*** Significant concerns have been raised with the loose level of discretion that this section provides to allow exemption certificates. This is not in line with accountability, transparency and quality development assessment and is open to abuse under bad governance.

(i) ***Maintain IDAS structure and provide for it in the Act,as provided in the SPAcurrently*** – this will ensure certainty and remove discretions around when each stage must be completed, including ensuring that public notification must be undertaken after all information is provided by the proponent in the information request stage. Further, where an application is required to be re-notified, it should be notified for the full period, which this requirement placed in the Act.

(j) ***Amend sections 58 of the Planning Bill - to provide for deemed 'refusals', rather than 'approvals'.*** We do not support the inclusion of deemed approvals where assessment managers have not responded in time. The provision of a deemed approval coupled with reduced time frames for referral agencies and assessment managers to respond may lead to either more approvals or refusals – both without adequate consideration which will likely lead to an increase in resource draining planning appeals. If an agency or assessment manager hasn't responded in time, they clearly have not had time to properly consider the application – it is therefore 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.

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

Yours sincerely

Edward Fensom GDURP Coordinator Brisbane Region Environment Council