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SUNSHINE COAST
Environment Council

18 January 2016

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 by the Sunshine Coast Environment Council to Government and Private Member Planning Bills 2015

The Sunshine Coast Environment Council (SCEC) is the peak regional environmental advocacy group on the Sunshine Coast. Established in 1980, it currently represents 55 community and ratepayer groups working on conservation, sustainability and natural resource management. SCEC has a combined membership of over 15,000 individuals with a further 4,000 supporters.

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

SCEC considers the planning legislation fundamental to what occurs within and to our natural and built environments. As such, we place a great deal of importance on a planning framework that delivers ecologically sustainable development and supports the expectations of the community. As a 'community of communities,' the Sunshine Coast is striving to become Australia's most sustainable region and holds the natural and livability values of this region in extremely high regard. It also expects to have its local planning scheme, a planning instrument developed through extensive community consultation (as it should be) respected and reflected in overarching state planning legislation.

Overall, 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**). SCEC draws your attention to the scorecard prepared by the Environmental Defenders Office Qld.[1]

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

[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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- 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. SCEC does not support the changes in both frameworks to demote much of the contents of the Planning Act to supporting instruments – this creates uncertainty for all stakeholders as to what the law is, where to look for it, and when it might be changed. At the very least, the supporting instruments must be provided and ultimately accessible if the community is to understand what is being proposed. And importantly, the consequences of what would result.
- 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 not an intuitive term, it must be supported by sufficiently detailed definition to guide its implementation.
- impedes community participation – by 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.
- offers 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 relating to 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 stronger protection

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

Further, the most recent State of the Environment Report in 2011 states that: *'[i]intensification of land use and long-term changes in climate remain the most significant factors causing land*

[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/

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degradation in Queensland.'[3] The Report provides the following indications that Queensland's already declining biodiversity is at further 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 are reported to be only 2000 koalas in the State at last count four years ago.[4]
- As one of Queensland's biodiversity 'hotspots,' the Sunshine Coast is reaching tipping points for many of its regional ecosystems and native wildlife, including the koala. The underpinning data supports the listing of the koala as 'vulnerable' in SEQ (and soon to be in Queensland) under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)
- As the fastest 'growing' region in SEQ, the Sunshine Coast is experiencing exponential and largely unsustainable population growth (as is SEQ as a whole)
- '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).[5]
- 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.[6]

Strong, well drafted planning laws to manage intelligent, sustainable and climate change responsive development in contemporary times are essential to ensure Queensland's environment is able to deliver ecosystem services and conservation outcomes into the future. Such services and outcomes are already compromised. It is therefore all the more imperative that stewardship of the environment and livability values are supported through appropriate planning mechanisms.

SCEC calls on the Committee to recommend the following:

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.[7] In the Reef 2050 Long-Term Sustainability Plan, provided to the World

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

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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.[8] 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)*** – to ensure that community groups are not deterred or hindered from participating in development appeals or enforcement actions for fear of receiving a costs order against them.

(c) ***Assessment managers are required to provide reasons for their decisions for certain assessable developments (section 63(4) Planning Bill)***, 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 as to why they haven't. This ensures more transparency in decision making and provides a check and balance on the powers held by SARA.

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

Protecting nature

(a) ***Provide for a requirement for SARA to follow the advice of certain specialist departments*** – 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. While SCEC acknowledges a level of 'in-house' experience, SARA is not necessarily resourced with specialists in these areas and is therefore not appropriately qualified to make the final decision in all circumstances. As a department essentially charged with delivering 'development', SARA's weighting towards approval is evident. Conversely, those departments with specialist knowledge in areas where development may impact may have little effective input. Concurrence agency power for specialist departments assists in

[8] 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

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balancing the imbalance of power caused by SARA holding the final and often non-transparent decision on planning matters.

SCEC recommends 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 create a higher level of integration of specialist knowledge and collaboration through decision making. It 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 actions for the resulting development conditions, as currently occurs.

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.*

(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. The next report is glaringly 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 encourage discussion.

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 and potentially contentious developments. This was previously provided for in the *Sustainable Planning Regulation 2009 Schedules 16 and 17*. SCEC welcomes the insertion of ss53(4)(b)(ii) which may give more necessary scope as to when public notification can occur for certain development. Concerningly, 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.

Example of potential impact if not changed: *Danny Developer would like to a big tourist resort, accommodating 1500 people within 100 metres of the Wildlife Park, one of the best protected and valued 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.

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 the environment suffers again.

(f) ***Remove section 60(2)(b) from the Planning Bill - which provides an unacceptable discretion to approve code assessable development without that development proposal complying with any of the assessment benchmarks***. Where is the assurance of quality, accountable, transparent decision making if decision makers can simply approve an application without compliance with the imposed assessment criteria?

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Example of potential impact if not changed: *Danny Developer applies for a code assessable development in the centre of Westside-a 25 storey 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 not based on criteria contained in the planning framework.*

(g) ***Remove and redraft section 48 of the Planning Bill** - **which provides 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 poor governance.

Example of potential impact if matters in (g) and (h) above are 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.*

(i) ***Maintain IDAS structure and provide for it in the Act, as provided in the SPA currently*** – this will ensure certainty and remove discretions around when each stage must be completed, including ensuring that public notification must be undertaken after all information is provided by the proponent in the information request stage. Further, where

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an application is required to be re-notified, it should be notified for the full period, which this requirement placed in the Act.

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 for 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.*

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

Example of potential impact if not changed: *Amanda Assessor is the only assessment manager at Bangowrie Council, a very low resourced local government. Amanda is swamped with applications and is struggling to assess them in time. Danny Developer has an application being assessed by Amanda and Danny is keen to get his application assessed as quickly as possible. Amanda asks Danny to consent to an extension to allow her more time to consider his application; Danny refuses this request. Amanda decides to refuse the application as she has not been able to assess the application fully. Danny appeals this refusal, which sucks up more of Amanda and the Council's resources. The Council already has 5 other development refusal appeals which were started similarly because Amanda didn't have time to properly assess the application.*

The Sunshine Coast Environment Council would like the opportunity to appear before the Committee in their hearing into this inquiry.

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Yours sincerely

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