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Dear Mr Chair and Committee Members

Submissions to Government and Private Member Planning Bills 2015

Last night we attended an information forum organized by EDO. Your Government representative who spoke was James Coutts. We were assured that we would be permitted a couple more days to send a submission.

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

We are Jeannette and Brian Douglass from Cleveland QLD and we are very concerned with the current planning laws and the direction planning is going in both Queensland and Australia. We are also concerned that the Priority Development Area (PDA) legislation falls outside the current legislation. This has stripped the community of genuine consultation and input – our democratic rights have been taken away. Why?

After last night's forum we are even more concerned. The planning legislation in place now we feel is a disaster and aspects of the new planned bills are worse.

The present planning law allows for inexperienced and naïve councillors and council planning staff to manipulate and be manipulated to suit their own and developers' desires – particularly large development corporations.

What good planning needs are specific, measurable indicators so that inexperienced staff can easily assess a development application with outcomes that stand up to public scrutiny. For example:

- A unit size must be no less that 400sq. metres,
- There must be two car parking spaces for each unit plus visitor car parking,
- A specific professionally obtained marine biologist water pollution indicator (set by the Government) for any coastal development.

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**). We draw your attention to the scorecard prepared by the Environmental Defenders Office Qld.[1]

[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 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 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. 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 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 are reported to be only 2000 koalas in the State at last count four years ago.[4]

[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.viii.

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

We suggest that the Committee 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 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)*** – 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.

   (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 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

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

matters impacting highly sensitive areas of the Great Barrier Reef, coastal zones, cultural heritage or vulnerable vegetation communities. SARA is not resources 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 assists in balancing the imbalance of power caused by SARA holding the 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.

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, 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.

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.

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 - 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?

Example of potential impact if not changed: *Danny Developer applies for a code assessable development in the center 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.*

(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.

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 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 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.*

(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.

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.

Yours sincerely

Jeannette and Brian Douglass