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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

By email only: ipnrc@parliament.qld.gov.au

Dear Ms Pasley,

EDO Qld submission on the Private Member Planning and Development Bills

We welcome the opportunity to provide a submission on the "Planning and Development (Planning for Prosperity) Bill 2015" (**P&D Bill**) and the "Planning and Development (Planning Court) Bill 2015" (**P&D Court Bill**).

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 environmental laws to deliver community legal education and to inform law reform.

Overview

We reiterate our earlier views provided to the LNP with respect to substantially similar bills in 2014, that in order to gain full and proper public scrutiny and debate of these changes, there should have been a comprehensive discussion paper prior to the Bills, as the current Queensland Government has produced, as occurred in NSW and as is standard for major reforms. Pushing these Private Member Bills through Parliament while the Queensland Government is undertaking proper consultation on planning reform in Queensland is confusing and a waste of the limited resources of Queenslanders.

Our detailed submissions on these bills are **enclosed** with this letter.

Overall, we recommend that the Committee does not recommend passing these bills. Public rights to access to information, public participation in development assessment including notification and submission rights have become less secure in the P&D Bill. Even the purpose omits all reference to community participation, compared with existing planning law. Furthermore, this legislation does nothing to enhance community rights and participation and in this regard, represents a major step backwards. For example, if a development is such that it requires impact/merit assessment, then there must be both a requirement in the Planning Act that public notification and appeal rights are provided to the community.

We also draw your attention to the point we have made numerous times; that the purpose of the legislation should be ecologically sustainable development (**ESD**) – a well-understood concept which

assists in certainty for the community and the development industry. While the version under consideration does include reference to ESD, the principles of ESD are not provided nor defined and ESD is not the key purpose of the P&D Bill. Unless such well-recognised concepts are included as the fundamental purpose of this Bill, this legislation does not achieve 'best practice' in planning.

In summary, our submissions enclosed cover the following areas:

Planning and Development Bill (Planning for Prosperity) Bill 2015

1. Various details must be in the Act, not the regulations, instruments or policies
2. EDO Qld is strongly opposed to the removal of the principles of ESD as a key purpose
3. There must be a requirement to advance the Act's purpose
4. State planning instruments should advance the purposes of the Act and the public consultation period should not be reduced
5. Local planning schemes should advance the purposes of the Act and not allow back-door amendments
6. Removal of State Planning Regulatory Provisions and Queensland Planning Provisions increases flexibility, but reduces certainty and performance
7. Changes to Development Assessment are unacceptable – numerous detailed points have been provided enclosed which outline our concerns
8. Public access to planning and development information must be easy and provided through statutorily enshrined rights and procedures

Planning and Development (Planning Court) Bill 2015

9. Requirement needed that the court act in a way that advances the act's purpose
10. Costs rules must allow free and fair access to the Court
11. Declaratory jurisdiction is more limited than under SPA

EDO Qld will gladly participate in Committee Hearings for this Bill. We are also happy to discuss any of the issues we raise in our submission at any time.

Should you require any further clarification on issues raised in our submission, please contact Jo Bragg or Revel Pointon of EDO Qld on (07) 3211 4466.

Yours faithfully,

Environmental Defenders Office (Qld)

Jo-Anne Bragg.

Jo-Anne Bragg

Principal Solicitor

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Planning and Development (Planning for Prosperity) Bill 2015

1. Various details must be in the Act, not the regulations, instruments or policies

The Bill proposes to move public notification requirements into regulations or local categorising instruments. EDO Qld is opposed to having important criteria and requirements in regulations, or, worse still, discretionary policies that are not subject to the normal rules of statutory interpretation.

If the objective is for a transparent and accountable system, important information such as public notification requirements and public access to information must be contained in the Act. Changes to important provisions must be subject to Parliamentary scrutiny, including by Portfolio Committees. What consultation is taking place for the regulations, supporting policies, 'access rules' and development assessment rules?

2. EDO Qld is strongly opposed to the removal of the principles of ESD from the key purpose of the Bill

The removal of the principles of *ecologically sustainable development* (ESD) in the P&D Bill as the fundamental cornerstone of planning law is a large step backward from the objective of achieving a "world's best practice planning system".

In Schedule 1 to this submission, EDO Qld has set out how the decision to remove ESD:

- Makes the statements in the Reef 2050 Long-Term Sustainability Plan purporting that decision making in Queensland is 'underpinned' by the principles of ESD[1], misleading and UNESCO's attention will be drawn to this fact;
- Is in breach of the Intergovernmental Agreement on the Environment;
- Is inconsistent with a suite of other Queensland and Commonwealth legislation;
- Is in breach of fundamental legislative principles;
- Is inconsistent with fundamental principles in international law; and
- Is not aimed at protecting the community.

Furthermore, the Committee may be aware of the distinction between an objects clause, which forms part of an Act, and extrinsic material, which does not form part of an Act. The implications of this are that the courts can have regard to an objects clause in determining the purpose of an Act and meaning of a provision, but not necessarily to extrinsic material without ambiguity, obscurity, manifest absurdity, or unreasonableness in a provision.[2] This casts some doubt on the appropriateness of using governmental policy and instruments as expressions of purpose in lieu of an express statutory statement.

EDO Qld strongly submits the principles of ESD must be given practical effect in the P&D Bill, for example:

- there must be requirements for statutory instruments to further the object of ESD;[3] and

[1] *Reef 2050 Long-Term Sustainability Plan*, Commonwealth of Australia, 2015, p35.
[2] *Acts Interpretation Act 1954* (Qld) s 14B.
[3] For example: s.22 SPA requires SPP to advance the purpose of ESD; s.33 requires regional plans to advance the purpose of ESD; s.79 SPA requires local planning schemes to advance the purpose of ESD; s.101 requires temporary local planning instruments to advance the purpose of ESD.

- ESD must remain as the object of the legislation in order that s.14A *Acts Interpretation Act 1954* (Qld) can be invoked.[4] An express statement of the objectives of an Act can be a strong and useful aid in determining the purpose of that Act and that interpretation which must be preferred.[5]

EDO Qld submits that if the Private Members introducing these Bills are serious about protecting our biodiversity, making Queensland a great place to live and boosting tourism, then it must restore the principles and language of *ecologically sustainable development* as the objects of the legislation.

Prosperity should be appropriately **defined.**[6]

3. There must be a requirement to advance the Act's purpose

Section 4 SPA specifically requires entities to exercise their power or perform functions that either advance the Act's purpose or must have regard to the purposes of the Act.

The P&D Bill does not contain any similar requirements akin to s.5(1) SPA, for example, to take account of short and long-term environmental effects of development, or to ensure the sustainable or prudent use of natural resources, amongst many other important ways of ensuring that development can be sustained indefinitely. Importantly, absent from the P&D Bill is any acknowledgment of the importance of community involvement in decision making, which appears in SPA at s.5(1)(g).

The clear message coming through these Bills is that the Private Members introducing them do not consider community involvement in decision making is important and that they are not interested in sustainable development.

4. State planning instruments should advance the purposes of the Act and the public consultation period should not be reduced

Section 22 SPA requires the SPP to advance the Act's purpose. No equivalent provision appears in the P&D Bill. With the possibility that State Planning Regulatory Provisions will be removed, the SPP provides the single most important planning instrument in Queensland – yet there is no requirement for the SPP to advance the Act's purpose (even with a purpose as vacuous as "by balancing environmental protection, economic growth and community wellbeing"). At what point does anyone referred to in the legislation actually "balance" these considerations? There is no positive obligation to do so.

EDO Qld submits that there must be a positive obligation on all entities referred to in the legislation to act in a way that advances the Act's purpose. This includes, but is not limited to, ensuring that making state and local planning instruments advance the Act's purpose. Otherwise, having three elements to balance is not given effect and is rendered meaningless and ineffective and would appear to be mere lip service.

[4] *Acts Interpretation Act* s.14A(1) provides: *"In the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation".*

[5] See, eg, *Russo v Aiello* (2003) 215 CLR 643, 662–663 (Gummow and Haydon JJ).

[6] As an aside, the word "including" at s.3(1) would need to be replaced with "by", however this suggestion does not condone the new purpose.

The consultation period for draft regional plans in SPA is 60 business days.[7] The proposed equivalent provision at section 8(1)(e)(i) provides for only 40 business days. Why is there a reduction in timeframes for allowing community participating in the draft regional plan? This is consistent with the removal of the current statutory requirement for entities to provide opportunities for community involvement in decision making.[8]

Draft regional plans must include a public consultation requirement of at least 60 business days. Members of the public must balance the understanding of bills and drafting of meaningful submissions while balancing all of the other significant pressures on their time – work, social participation, childcare, and other daily preoccupations. There are already hurdles to obtaining meaningful public participation; these should not be exacerbated through short submission periods.

Additionally, the SPA included provisions that explicitly provided for the requirements of regional plans and the key elements of regional plans. The P&D Bill does not include similar provisions. Instead, it only requires the Minister to consider the advice of the regional planning committee (s.12(2) P&D Bill). Without legislative requirements that express what elements a regional plan must include, the content of regional plans is left to the discretion of the Minister and the regional planning committee. Under the SPA the elements required focused upon specific issues such as – the spatial structure of development and land use patterns, key regional environmental, economic and cultural resources, and regional landscape areas.

It is unclear why Temporary State Planning Policies under section 10(5) P&D Bill can now have effect for up to two years, whereas under SPA they may only have effect for one year. No reasons or policy have been provided to substantiate why the time period should be doubled. This should be addressed.

EDO Qld submits that s.8(1)(e)(i) should be amended to require draft State planning instruments (regional plans and SPPs) to have a public consultation requirement of at least 60 business days.

In the absence of any evidence or reasons why the time a Temporary SPP has effect needs to be doubled, EDO Qld opposes s.10(5) and submits it should have a maximum period of one year only. Alternatively, evidence should be provided as to why this needs to be extended.

EDO Qld opposes the removal of a 10 year review of planning schemes (currently provided in section 91 of SPA). These reviews are important for ensuring that a plan is kept up to date to reflect community standards and expectations.

5. Local planning schemes should advance the purposes of the Act and not allow back-door amendments

Chapter 2, Part 3 concerning the making of planning schemes bears no requirement to advance the purpose of the Act, which represents a significant departure from SPA. It renders the purpose of the Act and the 'balancing' mentioned in s.3(1) without meaning. The phrase "appropriately integrates"[9] planning instruments and policies provides little guidance without reference to the purpose of the Act. There is no positive obligation for the planning scheme to identify strategic outcomes.

[7] SPA, s.60(3)(a).
[8] SPA, s.5(1)(g).
[9] P&D Bill, s.16(8).

The SPA expressly provides for the key elements of a local planning scheme (s88) and the core matters that a local planning scheme must address (s89).[10] The P&D Bill does not contain similar provisions; rather it seeks to deal with such matters within a regulation (s.15 P&D Bill). Dealing with core matters of a planning scheme under a regulation instead of the P&D Bill itself invites increased ministerial discretion. The responsible minister will be able to enact the regulation without consultation or debate and matters may change at their discretion which, in conjunction with the above described issue of balancing economic, social and environmental objectives, may provide a platform to pursue certain objectives (i.e. economic) at the expense of others (i.e. environmental and social).

Unlike SPA, there are no minimum provisions for the timeframe for public consultation on planning schemes (c.f. minimum 30 days under s118(1)(b)(i) SPA). EDO Qld submits that there should be an extended period given the new emphasis for public participation is now on plan making.

Section 85 of SPA imposes a restriction on what types of documents the planning scheme could adopt, which allowed a planning scheme policy to be adopted. Sections 107 and 115 of SPA further provided that planning scheme policies could generally not adopt any other documents prepared by local government. The purpose of these provisions is clear: to allow local planning scheme policies to be adopted, but ensuring that changes to those documents themselves – which means, essentially, a change to the planning scheme – will be transparent. Ensuring such changes go through a public notification and consultation process assists transparency of the current planning system. By removing these prohibitions, it opens the door up to councils changing the content of their local planning policies without informing the public. The proposed omission of these restrictions provides a back door means of changing planning schemes without transparency.

Similarly, SPA contains provisions that the planning scheme policies must support the planning scheme.[11] The P&D Bill provisions concerning planning scheme policies do not contain such a requirement. This essentially means that planning scheme policies could be about anything, that they are not required to support the planning scheme. This is definitely not an effective, integrated planning system, nor would it be a component of a 'best practice' planning system.

Again, there is no clear indication that planning scheme policies have the force of law, unlike SPA s.109. Is the intent of this omission to ensure that they are not subject to the normal rules of statutory interpretation under section 7(1) *Acts Interpretation Act 1954* (Qld), or alternatively, that they are not subject to declaratory proceedings under the P&D Court Bill? In the absence of policy reasons why this change was necessary, EDO Qld does not support the omission.

EDO Qld submits that planning schemes must be required to advance the purpose of the Act and identify strategic outcomes.

Notification of planning schemes should be increased from 30 days under SPA, to at least 40 business days under P&D Bill.

The restrictions on what local government documents can be adopted as set out in SPA, must be retained, to stop 'back door' amendments.

[10] For example, Valuable features (i.e. areas of ecological, cultural heritage, scientific, indigenous, aesthetic, social and historical significance, as well as areas of scenic, amenity and environmental value.)
[11] SPA, s.112.

6. Removal of State Planning Regulatory Provisions and Queensland Planning Provisions increases flexibility, but reduces certainty and performance

Queensland Planning Provisions (**QPPs**) ensure consistency across planning schemes. It also allows the public and the profession to understand plans from one region to the next. If they are to be removed, the government should consider whether having a 'model planning scheme' is a state interest. When the planning schemes come in for a state interests check, it could be assessed for divergence against the model planning scheme as a state interest.

EDO Qld is opposed to the removal of SPRPs (provided in section 247 P&D Bill). Relevant SPRPs currently in force, about which we receive numerous enquiries from the public, include the SEQ Regional Plan SPRP and the koala conservation in SEQ SPRP.

Of course SPRPs limit flexibility, but it does so for the sake of careful management of issues that are of critical importance, such as urban growth boundaries in SEQ or koala conservation in SEQ. SPRPs offer the government a chance to express specific matters that should not be assessed on a case by case basis, with multiple conflicting state interests competing. SPRPs provide the government a tool to express specific, targeted performance outcomes. Otherwise, such matters simply fall into the mix of state interests and the government will find it difficult to control these matters.

Alternative options proposed by the previous government and our thoughts are:

- A strong policy statement in the local plan, or directions to the local government for inclusions in the scheme? The problem is that this does not mean a transparent policy must be applied by the Minister in giving – or not giving- directions to local government about what to include in planning schemes. Development can occur without state involvement, with incremental decisions cumulatively impacting on the specific matter, contrary to performance outcomes;
- A strong statement in the SPP? This does not allow the government to achieve performance outcomes as the specific matter will be competing against other state interests, nor will the SPP be required to advance the purpose of the Act; or
- Grandfathering existing SPRPs, however this will not empower the State to express specific, targeted performance outcomes in the future.

Urban sprawl is an obvious example. Without a clear, strong statement from government sending a signal that types of development or ROL outside certain boundaries is unacceptable, then incremental decisions on this type of development will be permitted. The SPRP provides a means of ensuring there is not a cumulative impact of urban sprawl.

EDO Qld does not support the removal of SPRPs as a tool for government to express specific performance outcomes. EDO Qld strongly opposes any efforts to lapse the South East Queensland Regional Plan 2009-2031 and the SEQ Koala Conservation SPRP.

7. Changes to Development Assessment

The existing categories of assessment simply state the actual assessment: 'self-assessable' is where you self-assess your own development, 'code assessable' is compliance with codes, and 'impact assessable' simply considers what the impacts of the proposal are, given that those developments fall outside the planning scheme. Moving away from using self-describing titles does not necessarily improve the system.

(a) Provisions regarding amendments to applications and properly made applications will excuse significant non-compliance with the legislation

Regarding amendments to development applications, we note with concern that s.47 P&D Bill appears to allow an application – including for merit assessment – to have significant changes to it carte blanche. The process for minor compared to major changes is not clearly defined. This could essentially mean that a standard assessment application is made, then just before it is decided, a major change could be made to the application and there would be no need to notify even where the application now warrants merit assessment. Or alternatively, a merit assessment application is substantially changed and there is no requirement to re-notify or inform the public of the significant change.

Again, if a development can be totally changed without a consideration of the magnitude or significance of the change, then the community and businesses is left in the dark as to what is being proposed. This situation would not result in an "accountable and transparent" planning system. It would undermine the public's right to be aware of the application and make meaningful submissions. The important procedural fairness check afforded by SPA disappears and is open to abuse.

Section 45 P&D Bill does not expressly require that mandatory information, except owner consent, accompanies the application. This means that accompanying information is optional and simply listed on a form.

Allowing significant changes to be made to an application without a consideration of whether it should be notified, will lead to unscrupulous developers submitting low-impact applications and amending the application to include significant changes, without any statutory requirement to re-notify or give the public an opportunity to be heard on the amendments. S.47 must amended to reflect a distinction between minor/permissible changes and more substantial changes, to ensure that significant amendments are not quietly made without informing the public. This will assist in achieving transparency and honesty in the planning system.

EDO Qld strongly submits that there should be a requirement for a development application to be accompanied by mandatory supporting information detailed in section 46 of the legislation.

(b) Changes to categories of assessment dependent on regulations yet unseen

In terms of new categories of standard assessment and merit assessment, it is difficult to provide submissions on this new delineation as the effect of the proposed changes cannot be ascertained, given that so much of this detail will be in the regulations.

It is unclear what will happen when self-assessable development – to be 'accepted development' – does not satisfy the criteria it is required to. Will failure to follow the relevant codes mean that it is in fact, assessable?

It is inappropriate to have framework or 'skeletal' legislation such as this without accompanying draft regulations. Consulting on draft regulations in no way presumes the Bill will be passed, rather it is essential in order for practitioners to provide constructive feedback on the Bill.

EDO Qld submits that, at a minimum, the regulations must provide that all development that falls outside of the local planning scheme must be merit notifiable assessment.

(c) Offset conditions must not be imposed on standard assessment

The *Environmental Offsets Act 2014* (Qld) allows that offset conditions can only be applied if there will be significant residual impacts on prescribed environmental matters.

Chapter 3 Parts 3 and 4 do not make a distinction between merit and standard assessment in respect of imposing development conditions. EDO Qld submits that the imposition of offset conditions clearly demonstrates that the development will cause significant environmental impacts. Such development must not be standard assessment and it must be merit assessment complete with public notification.

The Bill must ensure that any development that causes such significant environmental impacts so as to warrant environmental offset conditions must be publically notifiable in merit assessment.

(d) Public notification and appeal rights are essential for merit assessment, and some types of standard assessment

Prior to the last State election, the LNP leader Campbell Newman made a clear commitment that there would be no changes to community third party appeals.[12] This has further been reflected in the election commitments made by the ALP in January 2015.[13] The proposed changes are a broken promise to Queenslanders as they remove statutory rights in SPA, instead allowing local governments to have more power to determine what is merit notifiable assessment.

There is a theme amongst industry representatives which we have overheard whereby bare assertions are made that submitters represent a major problem to the development industry. Yet we are not aware of any evidence to show there is a problem with vexatious community litigants acting in the public interest. There is no flood of cases in which the P&E Court found a public interest appellant was vexatious or frivolous.

The Queensland Government may be aware that in NSW, the Independent Commission Against Corruption (**ICAC**) has identified public appeals as of vital importance to a transparent and accountable planning system, and has recommended to the NSW government that the scope of merits appeals be *extended* as an anti-corruption measure. ICAC found, "The limited availability of third party appeal rights under the *Environmental Planning & Assessment Act 1979* (NSW) means that an important check on executive government is absent… The absence of third party appeals creates an opportunity for corrupt conduct to occur, as an important disincentive for corrupt decision-making is

[12] ABC Local Radio, Mornings with Steve Austin, 5 March 2012, available here: http://blogs.abc.net.au/queensland/2012/03/campbell-newman-in-studio.html

[13] Letter Deputy Premier Jackie Trad MP to EDO Qld, 29 January 2015.

absent from the planning system."[14] **The importance of third party community appeal rights cannot be overstated.**

Other reasons why public interest third party appeals in planning and development law are important, are that they:[15]

- encourage greater public debate on planning issues;
- improve, encourage and aid public participation in land-use decision making;
- allow multiple views and concerns to be expressed and 'provide a forum where collective rights and concerns can be weighed against the rights and concerns of the individual';[16]
- 'recongise that third parties can bring detailed local knowledge, not necessarily held by the planning authority or developer, to the planning decision';[17] and
- improve planning decision-making and ensure greater transparency and accountability within the decision-making process.

It appears that under section 48 P&D Bill, notification (and subsequent appeal rights) will now be determined through a mix of regulations, planning schemes, variation approvals and temporary local planning instruments – the 'categorising instruments' under s.38 P&D Bill.

Even where a local government wishes to have merit assessment be publically notifiable, they could be hamstrung by regulations that may effectively prohibit some types of merit assessment from being publically notifiable: s.48(3). EDO Qld is totally opposed to such a restriction. In the new model, should local government want to ensure community participation occurs, they should not be prevented from doing so.

There are several issues with this approach.

1. It does not take into account the fact that public notification is warranted even in instances where a development is standard assessment and is contemplated in the planning scheme. For example, if a quarry is anticipated in the planning scheme, the local government may want a full public notification in order to assess and consult on the scale of the quarry development. The Bill does not allow for that flexibility.

2. There is no minimum requirement that merit assessment requires public notification. If merit assessment is for applications that fall outside of the planning scheme, EDO Qld strongly submits that these must (not may) be notified – this should be provided for in the P&D Bill.

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[14] ICAC Report, February 2012, *Anti-Corruption Safeguards and the NSW Planning System*, available here: http://www.icac.nsw.gov.au/documents/doc_download/3867-anti-corruption-safeguards-and-the-nsw-planning-system-2012

[15] Judge Christine Trenorden, 'Third-Party Appeal Rights: Past and Future' (Paper presented at Town Planning Law Conference, Western Australia, 16 November 2009) <http://www.sat.justice.wa.gov.au/_files/10_Hon_Judge_Christine_Trenorden_Presentation.pdf>; Stephen Willey, 'Planning Appeals: Are Third Party Rights Legitimate? The Case Study of Victoria, Australia' (September 2006) 24(3) *Urban Policy and Research* 369–389 <http://www.tandfonline.com.ezproxy.bond.edu.au/doi/pdf/10.1080/08111140600877032>.

[16] Judge Christine Trenorden, 'Third-Party Appeal Rights: Past and Future' (Paper presented at Town Planning Law Conference, Western Australia, 16 November 2009) <http://www.sat.justice.wa.gov.au/_files/10_Hon_Judge_Christine_Trenorden_Presentation.pdf>.

[17] Ibid.

Public notification is at the heart of a transparent and accountable planning system. The community expects that the State Government will ensure that the planning system operates in a fair and balanced way. If public notification is appropriate, the community expects the State Government to regulate for this. Shutting out community from notification and appeal rights is the opposite of a transparent, accountable and effective planning system.

EDO Qld strongly submits:

- If local governments wish to prohibit development, or require development to be assessed, they should not be hamstrung by regulations.
- If local governments wish to make standard assessable development to the merit assessment category, they should be permitted to do so.
- all merit assessment must be publically notified. Amend s.48 to reflect that all merit assessment is publically notifiable.
- there must be fair and accessible public consultation on the new regulations and any amendment to the regulations especially concerning prescribed matters relating to categories of assessment and public notification.

- there should be no discretion allowed to assessment managers to accept public notification which has not complied with the rules, discretions can and are abused depending on who is holding the discretion. Public consultation is too important to place at the discretion of assessment managers. Strict rules provided in the Act must apply.

It appears that while merit assessment and notification have been 'de-coupled', notification and appeal rights remain coupled. EDO Qld is supportive of the coupling of notification and appeal rights, as public notification generally gives rise to an expectation that appeal rights flow. It also ensures that submitters' views are not ignored by the assessment manager and can be acted upon if the case calls for it.

(e) 'Exemption certificates' should be removed from the P&D Bill

Under SPA, a development permit is necessary for assessable development,[18] with the highest level of assessment triggering public notification and appeal rights.[19] Under the P&D Bill, local government can, without public notification, exempt assessable development from needing a development approval[20] if circumstances under which the development was categorised as assessable development no longer apply".[21]

There are no requirements for even notifying when such an exemption certificate is granted. This again does not contribute to a transparent and accountable system.

EDO Qld submits that 'exemption certificates' allowing local governments to grant exemptions from merit assessment, public notification and appeal rights, on a discretionary basis[22] should be removed from the Bill (or, at the very least, be restricted to standard assessment).

[18] SPA s 238.
[19] SPA s 295(1)(a).
[20] P&D Bill s 41.
[21] P&D Bill s 41(3).
[22] For example, P&D Bill s 41(2)(b)(ii).

(f) Definition of Assessment Manager should not be expanded to include third parties

The way in which an assessment manager is defined under the SPA is relatively straight forward.[23] By default (by way of schedule in the Sustainable Planning Regulations) the local authority was the applicable assessment manager for an application. Where certain issues arose (e.g. coastal development which triggered state interests), the assessment manager would become the state minister responsible for the state issue. This allowed issues of state significance to be appropriately reflected in the assessment process.

Under s.43(2) P&D Bill, the assessment manager is defined differently, to include that the regulation may identify any person as an assessment manager. Under the P&D Bill, local authorities are not expressly defined as the default assessment manager for applications. The P&D Bill also alludes to the outsourcing of assessment manager functions, provided they are standard assessment only, to other persons with the appropriate qualifications (s43(3)(b)). It is unclear who may be deemed an "other person" or how "appropriate qualifications" are measured.

If the intention of this section is to outsource development assessment of assessment applications to third parties, a number of issues may arise.

Firstly, the standard of the assessment, decision and conditioning of a development application will vary. Inevitably, the quality of the assessment processes, decision and conditioning may also be brought into question. Third parties are unable to fully appreciate development within the context of the broader local government policy and planning framework. Allowing applications to be assessed and decided in isolation, without appreciation for the cumulative impacts, may result in fragmented and low-quality outcomes.

Secondly, outsourcing of development assessment brings into question who is the responsible entity to join proceeding in the situation where an appeal is instigated against a decision.

Thirdly, by outsourcing the public body functions to private third parties, the opportunity for exploitation appears. Third parties may 'trade favours' or create environments where certain decisions work to their advantage in other matters. Without additional information as to what qualifies as a third party to undertake this function, it is hard to imagine these changes will have anything other than a negative impact upon the quality of decision-making and the ultimate outcomes that these decision will have on the built and / or natural environment.

EDO Qld submits this provision expanding the definition of 'assessment managers' under section 43 should be removed from the Bill, with the current definition under SPA maintained. Greater public consultation is required to identify why it is necessary to make third parties assessment managers.

(g) Requirements for public notification must be in the Act, not in discretionary rules

There is no detail on how public notification is to be undertaken and the timeframes. All requirements are set out in the 'Development Assessment Rules' ("**DA Rules**") which are made under s.65 P&D

[23] SPA ss246-249.

Bill. These rules appear to be made in the discretion of the Minister and are not subordinate legislation and can be changed at will.

Additionally, as the DA Rules are approved by regulation but are not themselves subordinate legislation, the Parliamentary Portfolio Committees charged with reviewing legislation have no jurisdiction to consider the DA Rules themselves, only the regulation approving them (which could easily be one line approving the DA Rules).[24] Where the DA Rules are not subject to scrutiny by a Parliamentary Portfolio Committee, there is no opportunity to consider whether the DA Rules breach fundamental legislative principles, nor is there an opportunity for public submissions on the changes to the DA Rules.

Even the motion to disallow the regulation approving the DA Rules, would be passed or rejected in its entirety. This is inefficient as the Parliament could block the regulation in its entirety, without passing some amendments.

This is not consistent with the guiding principle of 'Accountable' in the SPP[25] nor is it consistent with the means of achieving the purpose of the Act at s.3(2) P&D Bill. It allows the Minister to exercise a huge discretion in public notification and change the rules at any time without public consultation. How will this promote public confidence in the planning system?

EDO Qld strongly submits that public notification requirements be in the principal legislation. To ensure a transparent planning system in which the community can have confidence, they must not be in the discretion of the Planning Minister.

(h) Assessment and decision rules lack a clear structure and criteria for decision-making

Section 38(1)(c) P&D Bill provides that 'assessment benchmarks' against which assessable development is assessed will be in categorising instruments, which generally include regulations and planning instruments. It is unclear what impact the changes will have without further information on the regulations.

If decision rules in regulations change, the lack of certainty means that it will be difficult to advise or predict what an outcome might be regarding a proposed development or potential appeal.

There is no reason why the government should not be transparent about the key criteria for decisions and public notification requirements.

Additionally, placing key assessment criteria in the regulations in this manner appears to be a direct breach of the fundamental legislative principle that legislation must have sufficient regard to rights and liberties of individuals. EDO Qld considers this could constitute a breach of section 4(3)(a) *Legislative Standards Act 1992* (Qld) (**LSA**). Additionally, the Queensland Government's own

[24] *Parliament of Queensland Act 2001* (Qld), s.93.

[25] State Planning Policy, p.14. Guiding principle of Accountable provides: "Promote confidence in the planning system through plans and decisions which are transparent and accountable. Plans reflect balanced community views and aspirations with a clear focus on increasing the community's role in plan making. Defensible, logical and fair development decisions are supported through clear and transparent planning schemes. Access to planning information is simple and clear, capitalising on opportunities presented by technology."

Legislation Handbook provides: "*... it is generally inappropriate to provide for administrative decision making in a Bill without stating criteria for making the decision...*"[26]

How can the public have any confidence when such important criteria can be easily introduced and swiftly changed without proper parliamentary debate or a thorough public consultation process?

It is also unclear whether the regulations will provide for the matters set out in SPA s.313(3). EDO Qld submits that these matters in s.313 SPA including common material etc must be included in the Act rather than the regulations.

EDO Qld submits that all key criteria for assessment and decision making should feature in the P&D Bill rather than regulations.

(i) Assessment rules as currently proposed will not contribute to a transparent and accountable planning system

There is no clear test in the P&D Bill providing that the development must not conflict with a relevant instrument unless there are sufficient grounds.

The assessment guidelines for merit assessment in s.40 provide a broad discretion for considering 'other relevant matters' not prescribed. Example of 'other relevant matters' includes "*planning need*" and "*current relevance of the assessment benchmarks in the light of changed circumstances*" and expressly exclude any person's personal circumstances: s.40(7) P&D Bill.

Such a wide discretion is problematic. It appears to be crafted in a way to seek to replace SPA s.326(1)(b) and s.329(1)(b) concerning 'sufficient grounds' for deviating from a planning instrument. However the 'grounds' in SPA at Schedule 3 expressly means the 'public interest' and does not include the developer's[27] personal circumstances. Several issues arise:

1. By not referring to the 'public interest', the grounds or relevant matters become much broader than the public interest. There is a body of case law on what the public interest means that is useful and important, and it is unclear why a departure from this is required.

2. Planning instruments are supposed to be a reflection of the community's vision for their region or local government area, so only matters of public interest should be the basis for deviating from those instruments.

3. By not restricting the relevant matters to matters of public interest, it opens the door for just about anything to be considered. It essentially introduces an opportunity to insert whatever criteria the assessment manager wants. Such a broad discretion has serious implications as it has the effect of overriding assessments under the schemes. EDO Qld submits that the current drafting is inappropriate and it is not consistent with a transparent and accountable planning system.

[26] Department of the Premier and Cabinet, 'Legislation Handbook', at 7.2.1 available at: http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/fund-principles/rights-and-freedoms.aspx

[27] SPA, Schedule 3: appears as "an applicant, owner or interested party"

4. It is unclear why there is a proposal to extend the exclusion of the personal circumstances of applicant, owner or interested party, to now have "any persons" personal circumstances be excluded.

Neither the assessment rules nor the decision rules provide any guidance regarding how conflicts are managed. This will contribute to a huge lack of certainty in how applications are assessed and decisions are made.

The whole exercise of planning is fundamentally flawed if the link into actual decision-making is not made clear and decisive. Needless to say, this does nothing to promote certainty and a change of culture (except backwards).

For the above reasons, EDO Qld strongly submits that there be a clear statement in the decision rules that there must be sufficient grounds for deviating from the planning instrument, and that these grounds should be matters of public interest – otherwise the application is refused. Furthermore, the definition of relevant matter at s.40(7) P&D Bill should be replaced with the 'public interest'.

In the absence of any justification for changing the current law on this point, EDO Qld submits that the definition of "any person's" personal circumstances should be restricted to that of the developer (i.e. the applicant, owner or interested party), as currently appears in SPA.

(j) EDO Qld supports submitter appeals linked to public notification, but merit assessment must be linked with public notification

It appears that should a person make a submission, appeal rights automatically attach. EDO Qld notes:

- Providing open standing for anyone to make submissions about the merit assessable development under s.48(6)(a) P&D Bill is essential (we refer to our earlier concerns regarding ensuring that all merit assessment is notifiable);
- It is inappropriate to include the requirement to consider properly made submissions in the DA Rules (s.65(b) P&D Bill), rather there must be express provisions in the primary legislation for the consideration of submissions;
- We are supportive of eligible submitters having standing to appeal against a development approval under s.184 and Schedule 1, s.15 Schedule 1 P&D Bill. However we qualify this support with our comments above, specifically that all merit assessable development should be publically notified.

(k) Environmental Impact Assessment provisions should not be removed from the Bill

The Information Paper provided on the Consultation Draft of the P&D Bill in 2014 suggests that the SPA EIS processes are replicated but with procedural matters in the regulations, which are not yet publically available. It also suggests that the EIS process will be altogether removed from the Bill.

Although we are aware that the EIS is not often used, there must be a transparent assessment and analysis of why it is essential that these provisions be removed. EDO Qld submits that this process should remain, to be used as and when required.

EDO Qld does not support the removal of the EIS process at this stage. An analysis or discussion paper on the merits or problems with the EIS provisions in SPA is necessary.

(l) Ministerial call-in and new step-in powers do not provide public accountability measures

The proposal to remove the requirement for notification and submissions on the exercise of the Ministerial call-in power is not supported. The removal of these provisions, combined with the inability to challenge decisions by the Minister, along with the express statement that the Minister does not need to consult with anyone under s.89 P&D Bill means that there is little accountability in the exercise of the call-in power.

This is inconsistent with the purpose of the Bill which is to provide a transparent and accountable planning system. The community should be entitled to have a say on whether the proposed call-in is on the basis of a state interest, especially in circumstances where the local government is unsupportive of the development.

Section 88 is now extended not only if its subject involves a State interest, but also if its subject is *likely to involve* a State interest. This may have been inserted to avoid a situation where the Minister has called in a development where it has not *actually* involved a State interest. The Minister must be held to account if a development is called in when the subject did not actually involve a state interest. These words should be removed from s.88.

Despite its existence in the existing SPA, EDO Qld is generally opposed to the inclusion of unfettered powers without recourse to third party appeals. As ICAC noted in its 2012 report on the NSW planning system, third party appeals are an "important check on executive government". The absence of third party appeals for Ministerial decisions is not a feature of a transparent planning system.

EDO Qld is opposed to the absence of third party community appeals for the Minister's decisions.

EDO Qld submits that the public notification and submission processes set out in SPA should be included in the exercise of the Ministerial call-in power. Section 89 P&D Bill is inappropriate and will not give the community confidence that the planning system has accountability and transparency checks and balances.

The words "or is likely to involve" should be removed from s.88 P&D Bill.

8. Public access to planning and development information

The relegation of important provisions concerning transparent information to simply "access rules" under s.217 P&D Bill is extremely concerning. Furthermore, access rules are not subordinate legislation and can be changed without any notice or public consultation. The formulation of the access rules is entirely discretionary, and the rules themselves could confer a huge discretion on whether to make planning and development information publically accessible.

EDO Qld strongly submits that it is unacceptable to have such important provisions in "access rules". They must feature in the Act. The community needs certainty about access to information that affects the community.

We further note that the drafting of this section concerning access rules is markedly different than the drafting of s.65 P&D Bill concerning DA Rules. Specifically, DA Rules have a clear process for

amending the DA Rules in s.66 P&D Bill, in that they are required to have a new or amended regulation approving the amended DA Rules. Contrastingly, the provisions providing for access rules have no process laid out for their amendment.

Additional transparency provisions in s.67 P&D Bill for DA Rules, are not required for access rules.

Furthermore, a new definition of "appropriate" places an unreasonable limitation on information to *"information that adequately informs anyone who is accessing the information about their rights and obligations relating to the matter"* at s.217(5). What happened to public interest considerations? This proposed provision ignores the fact that community members can and do act in the public interest, not necessarily for their own self-interest. This proposed provision is not justified in any way. EDO Qld is strongly opposed to this unreasonable restriction.

If the Bill contains detailed provisions on limits and restrictions to the public accessing information, why can't the Bill contain clear requirements for ensuring the public has access to planning and development information?

EDO Qld has repeatedly previously requested at the Planning Forum, the formation of a technical working group to provide input into public access to planning and development information. These requests have, to date, been denied. We again repeat that request.

EDO Qld strongly submits that:
- Provisions concerning public access to planning and development information must be included in the Act.
- There must be a presumption enshrined in the Bill that all material, other than personal contact information, must be made publically available. Planning decisions affect the whole community.
- The word 'appropriate' be removed from s217.
- At the very least, similar transparency provisions for amending DA Rules should also apply to the access rules.
- A technical working group, including EDO Qld, should be established by the Planning Reform team to examine public access to information provisions.

Planning and Development (Planning Court) Bill 2015

9. No requirement that the court act in a way that advances the act's purpose

We refer to our earlier submissions above that there is no positive obligation to act in a way that advances the Act's purpose. Now that the P&D Court Bill sits separately to the Planning legislation, there is now no requirement on the Court to act in a way that advances the Act's purpose. This is a significant issue.

EDO Qld submits that the P&D Court Bill include a reference that the entities or persons exercising power or performing functions must do so in a way that advances the Act's purpose.

10. Costs rules must allow free and fair access to the Court

Public interest third party appeal rights have been embedded in Queensland planning law since the mid-1960s.[28] Over time, such broad, open rights have been recognised as an essential means of third parties accessing and achieving environmental justice in the public interest.[29]

Costs rules generally mean that access to justice is only for the wealthy

Part 6, Division 2 generally reflects the existing costs rules under SPA. EDO Qld strongly objects to these relatively recent changes to costs which overturn a 20+ year rule which has served an important public interest of community involvement in planning decisions which affect everyone.

EDO Qld has made extensive submissions on the costs rules and we refer and rely on our previous submissions on the costs rules.[30] The current Queensland Government has committed to restoring the 'own costs' rule,[31] recognising a) the hurdle that discretionary costs rules add to the already numerous hurdles affecting the involvement of the public in planning decision making; and b) the important role that third party appellants play in providing a check and balance against corruption and bad planning in our State.

The P&D Court Bill must provide for the 'own costs' rule for planning appeals.

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[28] Judge Christine Trenorden, 'Third-Party Appeal Rights: Past and Future' (Paper presented at Town Planning Law Conference, Western Australia, 16 November 2009) <http://www.sat.justice.wa.gov.au/_files/10_Hon_Judge_Christine_Trenorden_Presentation.pdf>.

[29] Judge Christine Trenorden, 'Third-Party Appeal Rights: Past and Future' (Paper presented at Town Planning Law Conference, Western Australia, 16 November 2009) <http://www.sat.justice.wa.gov.au/_files/10_Hon_Judge_Christine_Trenorden_Presentation.pdf>: Stephen Willey, 'Planning Appeals: Are Third Party Rights Legitimate? The Case Study of Victoria, Australia' (September 2006) 24(3) *Urban Policy and Research* 369–389 <http://www.tandfonline.com.ezproxy.bond.edu.au/doi/pdf/10.1080/08111140600877032>.

[30] EDO Qld and EDO NQ joint submission on the Sustainable Planning and Other Legislation Amendment Bill 2012 (Qld), dated 11 October 2012, available here: http://www.parliament.qld.gov.au/documents/committees/SDIIC/2012/05-Sustainable-Planning/submissions/033-EnvironmentalDefendersOffice.pdf

[31] Letter Deputy Premier Jackie Trad MP to EDO Qld, 29 January 2015.

Jurisdiction, process

11. Declaratory jurisdiction is more limited than under SPA

EDO Qld is strongly supportive of retaining open standing for declaratory proceedings in s.11 P&D Court Bill. We note however, the P&D Court Bill reduces the scope of matters that can be challenged from the existing legislation and this is not supported.

Section 456(1)(b) SPA provides that any person can bring a proceeding in Court about "*the construction of this Act, planning instruments under this Act and guidelines made under section 117, 627 or 630(1)*". The wording of the proposed s.11(1)(b) P&D Court Bill is simply "the interpretation of this Act or the Planning Act" and does not extend to "planning instruments under this Act and guidelines". This means that where applicants could once seek a declaration on the construction of the planning instruments and various guidelines, they could not under the proposed P&D Court Bill.

Section 7(1) of the *Acts Interpretation Act 1954* (Qld) provides that an "Act" includes "a reference to the statutory instruments made or in force under the law or provision." However the P&D Bill does not expressly provide that the following matters are "made or in force" under the provisions of the P&D Bill. This is especially concerning given that the following matters would be excluded from the declaratory jurisdiction:

1. Access Rules made by the Minister concerning transparent, accountable public access to information;
2. All DA Rules, including public notification requirements;
3. All planning schemes; and
4. Other statutory instruments including the State planning policy.

EDO Qld strongly submits that the declaratory jurisdiction must include a reference to "planning instruments and guidelines under the Planning Act" to make abundantly clear that this matters can be the subject of declaratory proceedings.

12. Other general comments on the P&D Court Bill

1. The removal of the proposed inclusion of a criminal jurisdiction for the P&D Court proposed in the draft 2014 version of the P&D Court Bill in previous Part 2 Division 4 is supported and we expect this will have broad community support. We are disappointed this has been omitted in this Bill. We urge that this proposal be continued with.

2. EDO Qld is supportive of s.41 P&D Court Bill allowing representative proceedings for declaratory proceedings. EDO Qld further submits that this provision should be extended for planning appeals. Such an extension would mean that planning appeals by a group of residents could potentially move faster through the Court, when proper authority for the representative is established.

Schedule 1 – Submission on the proposed removal of the principles of Ecologically Sustainable Development as fundamental to purpose

In removing ESD as the key purpose of the planning legislation, making no reference to the principles of ESD, and merely paying lip service to 'balancing' economic social and environmental issues, the P&D Bill ignores the international community, and is in direct conflict with policies and laws of the Australian Government, in breach of the IGAE and has mislead UNESCO on its approach to managing the Great Barrier Reef.

For over 25 years, ESD has ensured acknowledgment of the close relationship between development, communities and the environment. ESD is about living within our means. It is about development *within* ecological limits - the undisputed limits which nature provides and on which all life depends. It is about being able to identify circumstances in which the science is uncertain (the precautionary principle) and considering the future of those generations yet to come (the principle of intergenerational equity). It is about economic growth and development, but *sustainable* economic growth.

There is a misconception held by some industry representatives that those who advocate for ESD are somehow 'anti-development'. The opposite is true. Nobody wants to stop development – we need development – however it is essential that development does not undermine the ecological processes that support life. This is smart development that will ensure a healthy future.

The new Bill places 'prosperity' as the new goal, not *sustainable* prosperity, not even reasonable prosperity. To its credit, the new objects clause does include 'environmental protection' but it is merely a passing reference. There is nothing in the P&D Bill which requires any entities or decision makers to balance these considerations.

There appears to be a concerted effort to divorce planning from the environment, as if these were two mutually exclusive concepts. It is wrong to say "the environment is dealt with under the *Environmental Protection Act 1994* (Qld)" which regulates mining, gas and other *environmentally relevant activities*, but not the vast majority of urban and rural developments in Queensland which can also impact on the environment.

The main problems with removing ESD as the key purpose of the Planning Act and replacing it with prosperity are outlined below.

ESD is a fundamental principle of international law

In removing the principles of ESD and the language of *Sustainable Development*, the Queensland Government ignores the international community and long established best practice on the global stage.

It is turning its back on a concept that has, after almost three decades attained the high status of an accepted principle of international environmental law.[32] The International Court of Justice has suggested that Sustainable Development has become so well accepted throughout the world that it

[32] United Nations Environment Program, http://www.unep.org/environmentalgovernance/Portals/8/documents/training_Manual.pdf

may have achieved the status of customary international law.[33] It also forms part of the *Millennium Development Goals*, which set out eight goals that need to be achieved to advance mankind by 2015.[34]

Removing reference to ESD as a key purpose of this proposed new planning regime is in direct contrast to the direction of the international community.

Queensland is in breach of its national agreement on the environment

Since 1992, all levels of government in Australia (including Queensland) have legally agreed that the principles of ESD must drive policy making and program implementation. This is clearly set out in the Intergovernmental Agreement on the Environment (IGAE),[35] which Queensland has recently acknowledged applies to law in Queensland.[36]

Under the IGAE, the Queensland government is bound to use the principles of ESD to inform all relevant policy making and program implementation.[37] These include incorporating:

- The precautionary principle;
- The principle of intergenerational equity;
- Ensuring the conservation of biological diversity and ecological integrity; and
- Ensuring improved valuation, pricing and incentive mechanisms.

SPA currently reflects these important commitments which are also reflected under international law. The new Bill totally ignores these principles and in doing so, is in breach of the IGAE.

Queensland is in inconsistent with Commonwealth laws

ESD is a key pillar of various Commonwealth environmental laws, for example:

- *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act);[38]
- *Great Barrier Reef Marine Park Act 1975* (Cth);
- *Water Act 2007* (Cth);
- *Fisheries Management Act 1991* (Cth);[39] and
- *Natural Heritage Trust of Australia Act 1997* (Cth).[40]

It will come as a great surprise to the public if the Queensland Government receives approval powers under the EPBC Act either by way of an approval bilateral agreement or under a strategic assessment, when Queensland's planning framework totally ignores ESD and is inconsistent with Commonwealth law (and the Commonwealth's obligations under international law).

[33] See here: http://www.law.uq.edu.au/articles/qlsr/howley-qlsr-2-1.pdf at page 6.
[34] See MDG 7 which focuses on environmental sustainability.
[35] http://www.environment.gov.au/node/13008
[36] http://www.dsdip.qld.gov.au/resources/report/gbr/full-report.pdf at page 23
[37] http://www.environment.gov.au/node/13008 at section 3.
[38] Section 3 and 3A
[39] Section 3
[40] Section 21

Qld would be misleading UNESCO's World Heritage Committee on ESD

If the reduction in the weight given to ESD in our planning legislation proceeds, then the Queensland Government will have mislead the UNESCO World Heritage Committee when, in our final Reef 2050 Long-Term Sustainability Plan published in 2015, it effectively described ESD as the cornerstone of planning framework in Queensland.

The Queensland Government's draft report on the coastal zone acknowledged obligations under the IGAE and stated:

"The underlying policy intent of the Queensland Government Program is to achieve ecologically sustainable development (ESD) throughout the GBR coastal zone."[41]

and

"The purpose of Queensland Government's proposed Program is to ensure that any development in the GBR coastal zone occurs in a sustainable manner ..."

The word 'prosperity' is vague and ambiguous and has no recognised basis in environment and planning law whatsoever

On what basis is Queensland using the term 'prosperity'? From where has it been derived? Basing the entire framework on loose and vague terms with no established meaning or generally accepted principles (like ESD) provides absolutely no certainty or clear direction for our communities.

The justification for changing the Act appears as follows: *purpose be focussed on the characteristics of the system it establishes, and not the outcomes the system is intended to achieve at any given time.*[42] This overlooks the obvious – 'prosperity' is an outcome, laden with values and the justification is thus quite bizarre.

From our experience, the term 'prosperity' has not once been used in any environmental or planning policy or laws in Australia. Further it is not defined in the Bill which provides no guidance or direction for implementation.

There is nothing in the SPP that could be remotely held to represent the actual principles of ESD. The definition of ESD goes far beyond simply 'balancing': it incorporates several distinct principles of international environmental law.

The upshot is that the P&E Court will be left to look at vague dictionary definitions of the term when interpreting the act's provisions. For example, the 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."*

[41] http://www.dsdip.qld.gov.au/resources/report/gbr/full-report.pdf at page 23
[42] Information Paper accompanying the draft P&D Bill 2014, page 4.

Webster's College Dictionary (Random House, 2010) defines *prosperity* as:

> *"a successful, flourishing, or thriving condition, esp. in financial respects; good fortune."*

These definitions are aimed at accumulating financial wealth. The Court will interpret the purpose of the Act in this way. This is totally inappropriate and EDO Qld strongly opposes the use of this vague, loose word which has no prescribed definition.

Policy change must be aimed at protecting the community

The information paper states that one of the intentions of the Bill is to ensure that:

> *"the community will have **confidence** that the planning system promotes and protects their interests."*[43]

The community can have no confidence in a planning system that doesn't respect international and national norms and requirements in terms of sustainability. The community will not have confidence in a planning system that prioritises wealth above and beyond that of society and the environment on which we all rely. The safety and well-being of the community, not the short term interests of industry, is to whom the Queensland Government is ultimately responsible and that is to whom all laws should be aimed.

Obviously policy change is the prerogative of any democratically elected government, but that change must be justifiable (i.e. based on evidence) and provide clarity and certainty for the community. There is no evidence that ESD or sustainability has 'held back' Queensland in economic terms or in any other regard.

Compliance with Fundamental Legislative Principles

Fundamental Legislative Principles developed off the back of the Fitzgerald Inquiry in the early 1990s and were implemented to ensure certain rights and freedoms remained.[44] New laws must comply with these principles and not remove rights or reduce standards of accountability (including rights to a healthy environment) without justification.

It is well accepted that there is a connection between fundamental human rights and the environment which must be respected. This is the connection between human rights and sustainable development.[45]

The Office of Queensland Parliamentary Council acknowledges the FLPs are not exhaustively defined and are influenced by a variety of sources including:

- parliamentary conventions;
- common law rules and presumptions;
- evolving doctrines associated with the general field of administrative law;
- the perspective of parliamentary scrutiny of legislation committees;
- bills of rights guaranteeing human rights;
- statutory schemes promoting human rights; and
- international conventions and treaties.[46]

[43] Information paper on draft P&D Bill 2014, page 3.
[44] https://www.legislation.qld.gov.au/Leg_Info/publications/FLPNotebook.pdf
[45] http://unac.org/wp-content/uploads/2013/07/HRandSD-EN-PDF.pdf

Many of these sources point towards the acceptance of ESD as a fundamental principle and guarantee of international human rights such as the right to health and sanitation. Queensland communities are entitled to expect their government will apply internationally accepted norms in this regard.

When making policies, guidelines, codes and decisions on developments, there will be no requirement to consider future generations (who have rights too). There will be no requirement to follow the precautionary principle, another fundamental principle of international environmental law.

[46] https://www.legislation.qld.gov.au/Leg_Info/publications/FLPNotebook.pdf at page 5