

Submission no 029

11.1.5

2 July 2015



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Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House, George Street
BRISBANE QLD 4002

Dear Sir/Madam

Submission on Sustainable Ports Bill 2015

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association setup solely to serve councils and their individuals' needs.

The purpose of the Bill and the intention by the State Government to implement a coordinated approach to planning for port infrastructure across jurisdictions is commended by the LGAQ. Additionally, the previously identified LGAQ concerns regarding potential negative impacts on local governments and the communities they serve have been markedly reduced given the substantial differences between this Bill and the now lapsed *Ports Bill 2014*.

The LGAQ has consulted with the four (4) councils primarily affected by the Bill, being Gladstone Regional Council, Mackay Regional Council, Whitsunday Regional Council, and Townsville City Council. These local governments have indicated that the primary concerns identified in this LGAQ submission are accurate and that they are supportive of the LGAQ's recommendations. The primary matters of concern for local government include:

- no statutory obligation for compliance with associated guidance material;
- impacts on local government infrastructure;
- public consultation timeframes;
- Ministerial consideration of submissions; and
- appeals against decisions by an assessment manager.

The LGAQ would welcome the opportunity to discuss the five (5) recommendations contained in this submission at the Infrastructure, Planning and Natural Resources Committee's scheduled public hearing on Monday 13 July 2015.

Please feel free to contact myself or Mr Luke Hannan, Manager – Planning, Development and Natural Environment on (07) 3000 2226 / luke_hannan@lgaq.asn.au to discuss the matters contained in this correspondence further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Greg Hoffman', is written over a light blue horizontal line.

Greg Hoffman PSM
GENERAL MANAGER – ADVOCACY



Sustainable Ports Bill 2015

Submission

**Local Government Association of Queensland Ltd
2 July 2015**

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association setup solely to serve councils and their individuals' needs. The LGAQ has been advising, supporting and representing local councils since 1896, allowing them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places that count; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and delivering them the means to achieve community, professional and political excellence.

Executive Summary

The LGAQ welcomes the opportunity to provide feedback to the Infrastructure, Planning and Natural Resources Committee on the *Sustainable Ports Bill 2015* (Bill).

The purpose of the Bill and the intention by the State Government to implement a coordinated approach to planning for port infrastructure across jurisdictions is commended by the LGAQ. Additionally, the previously identified LGAQ concerns regarding potential negative impacts on local governments and the communities they serve have been markedly reduced given the substantial differences between this Bill and the now *lapsed Ports Bill 2014*.

Nonetheless, five matters remain a concern for local government which have been identified in the LGAQ's recommendations. These include:

- no statutory obligation for compliance with associated guidance material;
- impacts on local government infrastructure;
- public consultation timeframes;
- Ministerial consideration of submissions; and
- appeals against decisions by an assessment manager.

Each of these matters has been discussed in further detail under the relevant sections in the remainder of the submission.

1. Ministerial guidelines

- 1.1. Section 18(1) of the Bill identifies that:
The Minister may make guidelines about matters that may be considered in preparing or reviewing a master plan for a priority port ...
- 1.2. The LGAQ acknowledges that the *Port Master Planning: Guideline for determining a master planned area boundary* (Boundary Guideline) is in draft form and currently available for public comment. Further, the LGAQ appreciates that the draft Boundary Guideline represents only a portion of the guidance material intended to be developed for the establishment and review of port master plans and overlays. Nonetheless, local government raises concern that where guidance material is non-statutory in status it undermines the consistency of consultation, engagement, and participatory processes with key stakeholders and reduces the transparency of these processes.

Recommendation 1: The LGAQ recommends that all critical process, stakeholder engagement and decision-making frameworks are included in a statutory instrument to ensure confidence and certainty in process and decision-making.

2. Impacts on local government infrastructure

- 2.1. The LGAQ Policy Statement, which is the definitive statement of local government in Queensland, identifies:
 - 6.1.2.3 *Local government supports the implementation of a permanent infrastructure funding framework that does not further shift the cost burden onto councils and the community.*
 - 6.1.2.7 *Contributions towards the costs of providing local government infrastructure associated with State Government projects should be the same as those imposed for similar private sector developments.*
 - 6.1.2.8 *Local government supports the use of Priority Development Areas (PDAs) by Economic Development Queensland to facilitate development in specific locations only where undertaken in consultation with and with the full agreement by local government, including full agreement regarding infrastructure planning and expenses recovery.*
- 2.2. Section 2(3)(f) of the Bill states the purpose of the Bill is to be achieved, in part, by “identifying and protecting land and infrastructure critical to the effective operation of the port network.”
- 2.3. Section 28 of the Bill makes the Planning Act applicable for development in a master plan area and section 28(7) explicitly identifies that the Bill does not limit sections 313, 314, and 315 of the Planning Act. Sections 313(2)(f) and 314(2)(i) of the *Sustainable Planning Act 2009* regulate that an assessment manager must assess the proposed development against a relevant infrastructure plan. However, it is unclear whether the direct and indirect implications of port development on local government have been, or will be, considered through the port master planning process. For example, the development of a port master plan and implementation of a port overlay may propose to ‘upscale’ particular types of development that could affect the intended operation of a local government’s infrastructure plan. Apart from the potential of detrimentally affecting the safety and efficiency of infrastructure networks, not appropriately considering the implications of land use changes could pose a significant risk to a council’s financial sustainability by undermining its ability to plan (and budget) for necessary infrastructure.

- 2.4. The LGAQ considers a fair and equitable infrastructure planning and cost recovery framework is critical and thorough consideration of how the proposed legislation interacts with existing infrastructure planning processes is paramount.

Recommendation 2: The LGAQ recommends that a statutory instrument must ensure the process to develop port master plans and port overlays consider potential impacts on local government infrastructure and appropriately mitigate any adverse impacts, inclusive of related infrastructure funding, in consultation with council.

3. Public consultation timeframes

- 3.1. Sections 10, 11 and 15 of the Bill respectively identify:
- a 20 business day consultation period when the Minister proposes to make, amend or review a master plan;
 - a 30 business day consultation period when a new draft master plan is prepared; and
 - a 20 business day consultation period when an amended draft master plan is prepared.
- 3.2. Due to the significance of port planning instruments, local government submissions will most likely be considered by full council or an equivalent elected committee. As such, local government considers the consultation timeframes insufficient to genuinely consult on a port planning instruments given the instruments will “prevail to the extent of any inconsistency” over local planning instruments.

Recommendation 3: The LGAQ recommends amending sections 11 and 15 to retain a minimum forty (40) business day consultation period (consistent with current provisions under the *Transport Infrastructure Act 1994*) when preparing or amending a port master plan. Such a timeframe is not considered onerous and balances the need for transparency and due process.

4. Ministerial consideration of submissions

- 4.1. Section 12(1) of the Bill identifies that the Minister will “consider all submissions” but is silent in regard to how matters contained in submissions should be addressed.
- 4.2. The LGAQ notes that, often with regulated public consultation, a response identifying how a submission has been addressed is a necessary requirement of the entity reviewing the submissions. This transparency in decision-making aligns with the ALP’s response to the LGAQ’s *Queensland 2015 State Election Local Government Policy Plan* and will assist in delivering a planning system that is:
- open and accountable, to ensure communities and neighbourhoods can fully participate in the planning and development decisions that affect their local areas.*

Recommendation 4: The LGAQ recommends the Bill be amended to include provisions such ‘that all entities that make a submission in accordance with the public notice must be notified by the Minister of how the matters contained in the submission have been addressed.’

5. Appeals

- 5.1. The LGAQ understands that where a local government is the relevant assessment manager for a development in a port master plan area, the development assessment process will be consistent with the process regulated through the Planning Act and the local government will be accountable for any applicable appeal proceedings.
- 5.2. Given port planning instruments prevail over local planning instruments to the extent of any inconsistencies and limited assurances for local government that their concerns raised during the development of port planning instruments will be addressed, the LGAQ maintains that the State Government must be party to any appeal proceedings. This aligns with the intent of provisions that already exist in the *Sustainable Planning Act 2009* that regulate the

State Government as a party to appeals in certain circumstances where State Interests are applicable (e.g. SPA Sections 485(5) and (6) where an appeal is about a concurrence agency's response).

Recommendation 5: The LGAQ recommends that the State Government must be party to any appeal proceedings for decisions made by local government about development in a port master plan area.