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State Development, Infrastructure and Industry Committee
Parliament House
Brisbane Qld 4000

Copy by email to: sdiic@parliament.qld.gov.au

Submission in relation to the *Sustainable Planning and Other Legislation Amendment Bill 2012*

Coomera Resort Pty Ltd (**Coomera Resort**) makes the following written submission in relation to the *Sustainable Planning and Other Legislation Amendment Bill 2012* (**Bill**).

1. Background

- 1.1 Coomera Resort owns a significant amount of land (approximately 157 hectares) within the declared Coomera Town Centre master planned area. **Attached** is a map showing the extent of Coomera Resort's landholdings.
- 1.2 Coomera Town Centre is a master planned area, and is subject to the provisions of Chapter 4 of the *Sustainable Planning Act 2009* (**SPA**).
- 1.3 The Coomera Town Centre Structure Plan (**CTC Structure Plan**), which forms part of the Gold Coast City Council's (**Council**) Planning Scheme 2003 (as amended) (**Planning Scheme**), was adopted as an amendment to the Council's Planning Scheme on 17 September 2010, taking effect on 15 October 2010.
- 1.4 Under the CTC Structure Plan, Coomera Resort's land is identified as within:
 - (a) Master Plan Unit 2 – Mixed Residential North MPU2; and
 - (b) Precincts 4 (Medium Density Residential), 5 (High Density Residential) and 9 (Open Space – Subprecincts 9a (Recreational Open Space/Urban Parkland Linkage) and 9b (Ecological/Nature Conservation)).
- 1.5 Our submission focuses on the clauses of the Bill which propose amendments to the provisions of the SPA relating to master planned areas. In particular, we have examined the proposed transitional provisions to be introduced to "*preserve the use and development rights established by existing structure plans and master plans*" upon the Bill's removal of master planning and structure planning arrangements.

- 1.6 For the reasons outlined below, we are concerned that, despite the statements in the Bill's Explanatory Notes, the transitional provisions do not adequately preserve existing rights and that, in fact, development of Coomera Resort's land will be disadvantaged by the Bill.
- 1.7 Our submission suggests amendments to the transitional provisions to ensure that development in master planned areas is not worse off as a consequence of the Bill.

2. Executive summary

- 2.1 A key issue that arises as a consequence of the Bill's amendments is that Coomera Resort will now be required to make a Section 242 preliminary approval application to achieve the types of things that would presently be the subject of a master plan application (e.g. identifying the size and location of nodes, lowering levels of assessment for development in the nodes, including particular development codes).
- 2.2 Such an application will be subject to impact assessment and **third party appeals**, whereas **presently**, although the CTC Structure Plan (section 3.5) and the SPA require public notification of the master plan application, **third party appeal rights do not flow** from the making of a submission.
- 2.3 The Bill does not, contrary to the Explanatory Notes, "*preserve the use and development rights established by existing structure plans and master plans through transitional provisions*". The effect of the Bill is to put Coomera Resort in a worse position than it is presently – that is, to subject development applications to the risk of third party appeals.
- 2.4 An appropriate amendment to the Bill is required to ensure that development in master planned areas is not disadvantaged by the Bill. We set out in paragraph 6.8 below suggested wording for an amendment to proposed transitional Section 899.

3. Chapter 4 of the Sustainable Planning Act 2009 – Master planned areas

- 3.1 The SPA contains Chapter 4 "Planning partnerships". Chapter 4 provides for the identification of, and subsequent planning processes for, areas (called master planned areas) to be the subject of integrated land use and infrastructure planning.
- 3.2 Coomera Town Centre is one such master planned area, and is subject to the provisions of Chapter 4 of the SPA.
- 3.3 Chapter 4 of the SPA requires the preparation of structure plans for declared master planned areas. In turn, Chapter 4 permits structure plans to identify master planning requirements for all or part of the area.
- 3.4 Section 155 of the SPA sets out content requirements for master plans, including that the master plan must:
 - (a) include a master plan code that states the development entitlements and development obligations for the master planning unit for the plan;
 - (b) state levels of assessment for development in the master planning unit;
 - (c) identify or include codes for the development.
- 3.5 In terms of stating levels of assessment for development in the master planning unit, Section 155(2) provides that the master plan may state levels of assessment that vary the effect of a level of assessment stated in the structure plan in one or more of the following ways:

- (a) if the structure plan provides that a master plan may state a lower level of assessment for impact assessable development – vary the level of assessment;
 - (b) for development stated in the structure plan as code assessable development – vary its level of assessment to self-assessable or development requiring compliance assessment;
 - (c) increase any level of assessment state in the structure plan.
- 3.6 Under Section 155(3), a master plan may identify or include a code for development that varies the effect of a code in the local government’s planning scheme included in the structure plan. However, the code can not vary the effect of the structure plan area code identified or included in the structure plan and it must be substantially consistent with the code that it is varying.
- 3.7 Where a master plan application is submitted, public notice is required in particular circumstances set out in Section 166 of the SPA. However, Section 167(1)(g) of the SPA specifies that the notice must state “*that the making of a submission does not give rise to a right of appeal against a decision about the application*”.

4. Coomera Town Centre Structure Plan

- 4.1 Under the CTC Structure Plan, Coomera Resort’s land is identified as within:
- (a) Master Plan Unit 2 – Mixed Residential North MPU2; and
 - (b) Precincts 4 (Medium Density Residential), 5 (High Density Residential) and 9 (Open Space – Subprecincts 9a (Recreational Open Space/Urban Parkland Linkage) and 9b (Ecological/Nature Conservation)).
- 4.2 Clause 3.0 prescribes “master planning requirements” for Master Plan Units. Clause 3.1.3 permits a master plan to vary the level of assessment identified in Clause 6.0 – Table of Development in the CTC Structure Plan as contemplated by Section 155(2) of the SPA.
- 4.3 Clause 3.2 contains lengthy and detailed requirements regarding consultation strategy for master plan applications, and Clause 3.3 contains detail of content requirements for master plans. Broadly, master plans must comply with:
- the overall Intent for the CTC described in Clause 1.0;
 - the Strategic Outcomes described in Clause 4.0;
 - the precinct Intent, as well as any subprecinct Intent, as described in Clause 5.0;
 - the Outcomes in Support of the Intent for the precinct, as well as any applicable subprecincts.
- 4.4 The CTC Structure Plan contemplates that master plans will build upon the detail contained in the CTC Structure Plan to enable specific land use and development outcomes to be determined, including by provision of a Master Plan Unit Code.
- 4.5 In terms of the Precincts for Coomera Resort’s land, the Precinct Intent and Outcomes for both the Medium Density and High Density Residential Precincts identify that the Precincts will be based on “neighbourhood nodes” which accommodate certain retail/commercial uses. While the Intent and Outcomes in Support outline the type of nodes expected, the Table of Assessment makes the range of uses (e.g. shop, child care centre, medical centre) impact assessable. Further, the location of nodes is not identified on any of the CTC Structure Plan

maps. In that regard, Clause 3.1.3 of the CTC Structure Plan contemplates that a master plan may vary the level of assessment for assessable development requiring impact assessment to code, self-assessment or compliance assessment.

4.6 Any master plan application for Coomera Resort's land under the current SPA provisions would, as contemplated by the CTC Structure Plan:

- identify the location and size of nodes;
- lower the level of assessment for particular retail/commercial uses in the nodes;
- include a code (for example, providing for small lot housing) to build upon the detail contained in the CTC Structure Plan.

4.7 Significantly, although such a master plan application would require public notification (refer to Clause 3.5 of the CTC Structure Plan and Section 167 of the SPA), the **Council's decision would not be subject to third party appeal rights.**

5. Sustainable Planning and Other Legislation Amendment Bill 2012

5.1 The Bill proposes to "remove ineffective master planning and structure planning arrangements" from the SPA. The Explanatory Notes state that:

*"The existing master planning and structure planning arrangements in the Sustainable Planning Act 2009 are inefficient and have not added value to planning partnership arrangements. Consequently, the Bill removes these provisions, but **preserves the use and development rights established by existing structure plans and master plans through transitional provisions***

...

The transitional provisions outline a strategy that:

...

- *provides that applications inconsistent with the structure plan will require notification and the regulatory provisions of the Sustainable Planning Act 2009 apply. Applications consistent with the structure plan and/or master plan will transition the jurisdictions of the declared master planned area*

...

5.2 The Bill achieves the removal of master planning and structure planning arrangements by omitting Chapter 4 of the SPA entirely¹. The Bill also proposes lengthy transitional provisions in respect of the omission of Chapter 4.

5.3 Proposed Section 898 provides, relevantly, as follows:

"(1) Subject to subsection (5), a structure plan for a master planned area of a local government continues in effect for this Act and any other Act-

- (a) as if former chapter 4 had not been repealed; and*

¹ Refer Clause 29

(b) until the local government amends its planning scheme under section 761A.

...

(5) The following provisions of a structure plan for a master planned area are of no effect-

(a) the identification of any master planning requirements under former section 141(2)(b);

(b) a provision that states a master plan may identify alternative levels of assessment under former section 141(3)(b);

(c) a provision under former section 141(3)(c) that states development can not be carried out in the area until there is master plan for the area;

(d) a provision that states a development application for a preliminary approval to which section 242 applies can not be made for development in the area."

5.4 Proposed Section 899 changes the SPA's current restrictions on particular development applications in master planned areas:

"(1) This section applies to a development application for a preliminary approval to which section 242 applies that is made after the commencement for a master planned area.

(2) To remove any doubt, it is declared that-

(a) despite former section 134, the development application can seek to vary the effect of the structure plan area code identified or included in the structure plan for the area; and

(b) if the development application seeks to vary the effect of the structure plan area code, chapter 6, part 4 applies to the application."

5.5 Chapter 6, Part 4 of the SPA is the "Notification Stage" of IDAS. Section 295(1) of the SPA provides that the notification stage of the SPA applies to an application if the application is an application to which Section 242 applies, except in limited circumstances outlined in Subsection 295(3).

6. Issues and resolution of issues

6.1 If the Bill is adopted in its current form:

(a) The CTC Structure Plan continues in effect as if Chapter 4 had not been repealed and until the Council makes its SPA planning scheme incorporating the structure plan under Section 761A;

(b) Any provisions of the CTC Structure Plan of the type described in Section 898(5) (i.e. provisions relating to master plan requirements) are of no effect;

- (c) A development application for a preliminary approval to which Section 242 of the SPA applies can be made for development in the master planned area;
 - (d) A Section 242 preliminary approval application seeking to vary the effect of the CTC Structure Plan area code, will be subject to the Chapter 6, Part 4 notification stage.
- 6.2 The wording of proposed Section 899(2)(b) implies that a Section 242 preliminary approval application for a master planned area will only be subject to Chapter 6, Part 4 of the SPA if it seeks to vary the effect of the structure plan area code. However, having regard to Section 295(1) of the SPA, it seems clear that **any** Section 242 preliminary approval application will be subject to the notification stage (irrespective of Section 899(2)(b) of the SPA), subject to certain limited exceptions.
- 6.3 A key issue that arises as a consequence of the Bill's amendments is that Coomera Resort will now be required to make a Section 242 preliminary approval application to achieve the types of things that would presently be the subject of a master plan application (e.g. identifying the size and location of nodes, lowering levels of assessment for development in the nodes, including particular development codes). Such an application will be subject to impact assessment and **third party appeals**, whereas **presently**, although the CTC Structure Plan (section 3.5) and the SPA require public notification of the master plan application, **third party appeal rights do not flow** from the making of a submission.
- 6.4 In this regard, the Bill does not, contrary to the Explanatory Notes, "*preserve the use and development rights established by existing structure plans and master plans through transitional provisions*". The effect of the Bill is to put Coomera Resort in a worse position than it is presently – that is, to subject development applications to the risk of third party appeals.
- 6.5 It is our understanding that this will be the consequence of the Bill's new regime, even though future Section 242 preliminary approval applications will be consistent with:
- the overall Intent for the CTC described in Clause 1.0;
 - the Strategic Outcomes described in Clause 4.0;
 - the precinct Intent, as well as any subprecinct Intent, as described in Clause 5.0; and
 - the Outcomes in Support of the Intent for the precinct, as well as any applicable subprecincts.
- 6.6 In other words, a Section 242 preliminary approval application will be necessary to implement the CTC Structure Plan's planning intent and outcomes through code assessable development, because despite the detailed workshops and reports prepared during the making of the CTC Structure Plan to guide the nature and scale of neighbourhood nodes, the existing mapping, tables of development and CTC Structure Plan Place Code do not presently facilitate this approach because the documents were drafted envisaging a later master plan application process.

Option for resolution

- 6.7 The option for resolution of this issue in our opinion is for changes to be made to the transitional provisions of the Bill to the effect that, if a Section 242 preliminary approval application needs to be made to achieve effectively the types of things that could have been achieved previously with a master plan application then, provided the application is consistent with the Intent and Outcomes of the Structure Plan, the application is not subject to third party appeals.

6.8 We suggest the following addition to proposed Section 899:

" ...

(2) *To remove any doubt, it is declared that-*

...

(c) notwithstanding section 899(2)(b), Section 462, Section 482(1)(a)(iv) and Section 485(4) do not apply."

6.9 In our view, due recognition should be given to the significant amount of time and consultation that have gone into preparing the CTC Structure Plan (and indeed structure planning for other master planned areas). An acknowledgment that the risk of third party appeals is unwarranted for proposals that are consistent with the Intent and Outcomes of the Structure Plan for the precincts by way of an appropriate amendment to the Bill is required to ensure that development in master planned areas is not disadvantaged by the Bill.

We thank you for your consideration.

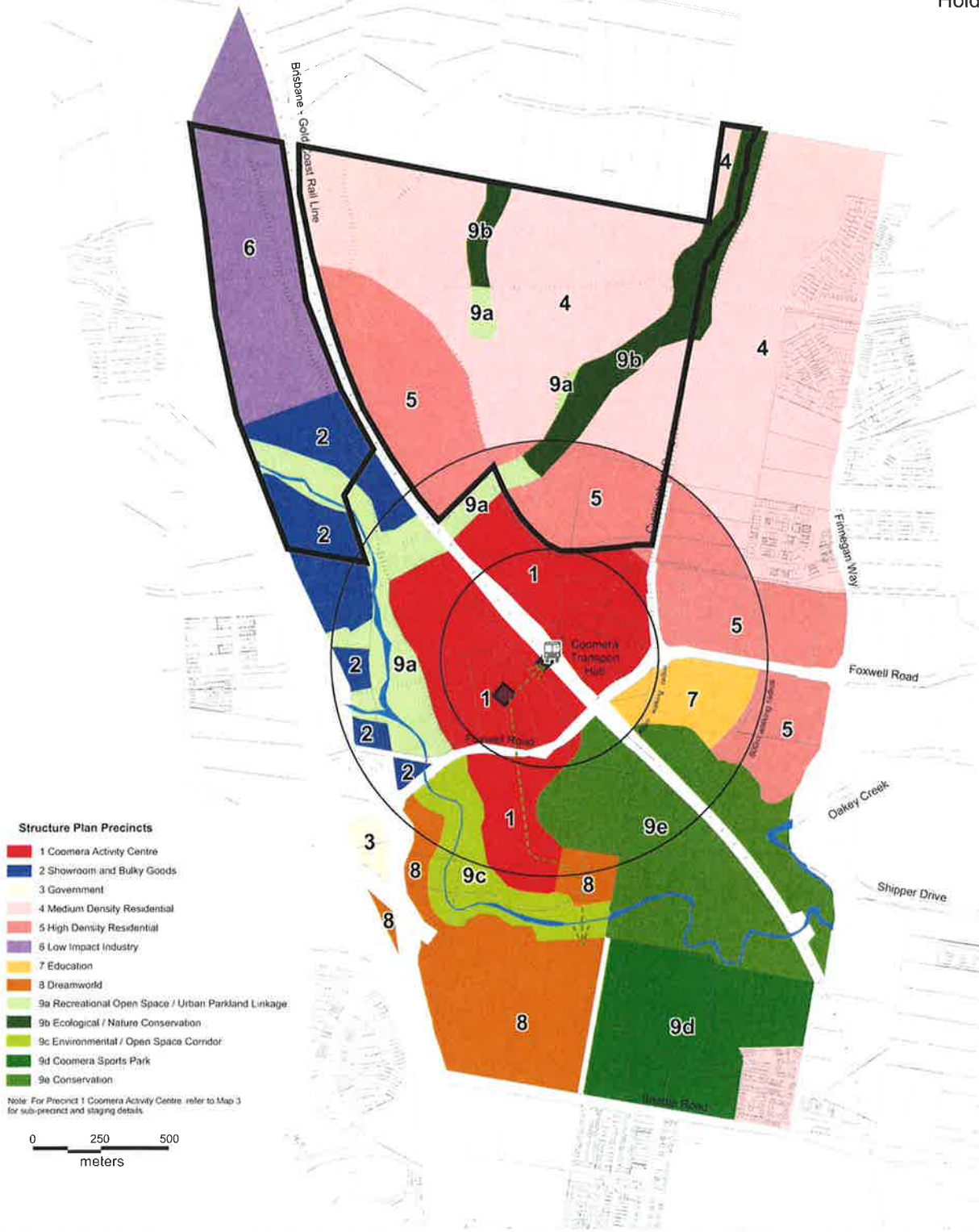
Yours faithfully



Kaeko Omura
Managing Director
Coomera Resort Pty Ltd

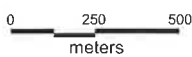
Attached: Map showing Coomera Resort's landholdings within the Coomera Town Centre Structure Plan Area

— Coomera Resort Land Holdings



- Structure Plan Precincts**
- 1 Coomera Activity Centre
 - 2 Showroom and Bulky Goods
 - 3 Government
 - 4 Medium Density Residential
 - 5 High Density Residential
 - 6 Low Impact Industry
 - 7 Education
 - 8 Dreamworld
 - 9a Recreational Open Space / Urban Parkland Linkage
 - 9b Ecological / Nature Conservation
 - 9c Environmental / Open Space Corridor
 - 9d Coomera Sports Park
 - 9e Conservation

Note: For Precinct 1 Coomera Activity Centre refer to Map 3 for sub-precinct and staging details.



Legend

- Coomera Transport Hub (Railway Station & Transit Interchange)
- Railway Line
- Major North-South Boulevard (Connecting Coomera Transport Hub & Dreamworld)
- Walkable Catchment
- Cadastre
- Transport Forecourt
- Civic Area
- Waterbody
- Indicative Future Road Network

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