Planning (Social Impact and Community Benefit) and Other Legislation Amendment Bill 2025

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QUEENSLAND CONSERVATION COUNCIL

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20 May 2025

State Development, Infrastructure and Works Committee
Parliament House, George Street, Brisbane QLD 4000

Environment Groups Response to: Planning (Social Impact and Community Benefit) and Other Legislation Amendment Bill 2025

Dear State Development, Infrastructure and Works Committee,

Queensland Conservation Council and our undersigned member groups, Cairns and Far North Environment Centre, North Queensland Conservation Council, Capricorn Conservation Council, Gladstone Conservation Council, Wide Bay Burnett Environment Council, Koala Action Inc, Darling Downs Environment Council and Gecko Environment Council, represent thousands of Queenslanders who are deeply committed to preserving our unique natural and cultural heritage. We are extremely concerned about the parts of this Bill relating to Olympic venues because:

- The exemption of Olympics developments from planning and environment laws is incompatible with the fundamental legislative principles and threatens Queensland's iconic species further
- The proposed alternative cultural heritage management plan is incompatible with the Human Rights Act and Aboriginal and Torres Strait Islander parties have not been consulted

While we are supportive of additional social impact assessment and community benefit agreement requirements for large renewable energy projects, we are concerned about the implementation of the Bill, and its application to small scale projects and projects already in development. We are concerned that these amendment could create further confusion and potentially preclude communities reaping full benefits of renewable energy development if not progressed at the same time as Renewable Energy Zone frameworks that allow regional benefit sharing and support local governments to develop community investment priorities with genuine community input.

Olympic Venues

Fundamental Legislative Principles

The Government has identified itself that the Bill is "potentially incompatible with fundamental legislative principles". We do not agree that this is justified to deliver the Games 2032 infrastructure.

Rule of Law

We are deeply concerned that the Bill is incompatible with the fundamental legislative principle of rule of law and the principle of equality before the law by creating a different set of laws to apply to Olympic developments than apply for all other Queenslanders undertaking any development.

Our comments on particular projects are below but we are even more concerned that no venues have been specified for villages or transport corridors. This holds significant risk to the community that projects with significant environmental or social impact could be exempt from the laws that usually hold these projects accountable.

Separation of Powers

We are concerned that the Bill excludes appeal rights for developments under it, except when affected by jurisdictional error. The jurisdictional error part is included as it has been proven in *Kirk's Case* in the NSW High Court that the State legislature cannot limit jurisdictional review.

We are further concerned that section 53DD(3) appears to prohibit any court action, which is not criminal prosecution, being brought if it will delay the declared venue or village. This appears to encompass any statute or common law cause of action, not limited to the 15 Acts that have been listed for exemption. This broad and sweeping provision seems to be at odds with the constitutionally protected role of the State Supreme Court, as outlined above. The role of the courts is vital to the separation of powers and fundamental to parliamentary democracy.

Cultural Heritage

Victoria Park, particularly has a long and studied history of Jaggera cultural connection[1]. The concerns raised around the potential impact of development in Victoria Park/Barrambin on the cultural heritage of the site indicate that the development has a long way to go in terms of bringing First Nations knowledge into the design of the development. The project must

[1] https://resources.finalsite.net/images/v1723762059/brisbanegrammarcom/ck0sibo2zwv4pclbpa7k/BGSEnvirons-RKerkhoveandBWilson-final.pdf

prioritize bringing this in, not creating alternative pathways to perpetuate or even weaken cultural heritage inclusion in Olympic venue development.

When the visitors come to the Olympics, we want to be in a position to celebrate the heritage of the oldest living culture in the world. Passing laws to minimise the voices of Aboriginal people around the protection of cultural heritage in the approval process for Olympics is antithetical to this goal, and sets the stage for significant animosity and attention at the continued history of dispossession and destruction of cultural heritage.

Our specific feedback on the Bill and default plans is below.

Lack of free, prior and informed consent

Queensland's Aboriginal Cultural Heritage laws are not working. We urge prioritisation of a review of the protection of First Nations cultural heritage in line with the Environmental Defenders Office advice[2]. The Aboriginal Cultural Heritage Act and Torres Strait Islander Cultural Heritage Act (together, the Cultural Heritage Acts) have been under review since 2019[3]. Submissions were reviewed and clear recommendations were put together by the Government. This proposed Bill further erodes the minimal rights afforded under the Cultural Heritage Acts by failing to reflect the principle of free, prior and informed consent.

We are deeply concerned that the Bill has been introduced without appropriate consultation with affected First Nations people. There is an incredibly short public consultation timeframe of just 13 business days to review the 144 page Bill and provide submissions. To our knowledge there was no targeted consultation with affected stakeholders. To that end, the Bill should be withdrawn, and appropriate consultation should occur at the direction of First Nations communities, to ensure that the proposed changes are progressed with their free, prior and informed consent. Specifically, the Minister should ensure that Native Title Service Providers and Native Title Representative Bodies in Queensland are consulted, including on the proposed obligations on those bodies to provide the names and details of any person "whom the representative body reasonably believes may be a party"[4].

Incompatibility with Human Right Act 2019 (Qld)

Chapter 4, Part 2, clause 66 of the Bill is incompatible with section 28 of the Human Rights Act 2019 (Qld), which relates to the cultural rights of Aboriginal and Torres Strait Islander people because it erodes existing rights and processes to protect Country and cultural heritage.

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[2] https://www.edo.org.au/wp-content/uploads/2022/04/220414-EDO-submission-to-Cultural-Heritage-Acts-Options-Paper.pdf

[3] Queensland Government (2024) *Cultural Heritage Unit*

[4] See proposed Brisbane Olympic and Paralympic Games Act, s 53DK.

The Minister also provided a human rights compatibility statement[5] which acknowledges that: *The construction of the venues, villages and Games-related transport infrastructure may interfere with the ability of persons to practice their cultural rights, for example, by limiting access to places of worship or the ability of persons to congregate together to practice their culture. [...]The development of the venues, villages and Games-related transport infrastructure may interfere with the ability of Aboriginal peoples and Torres Strait Islander peoples to maintain their traditional connection to the land by limiting their access and their ability to conserve and protect the environment and productive capacity of their traditional lands and waters.*

That statement fails to engage with the legislative requirement as to whether the above impacts are reasonable and demonstrably justifiable, as required by the sections 8, 13 and 38 of the Human Rights Act.

In our view, the amendments are neither reasonable nor proportionate and therefore the Bill should not be passed.

Key concerns with Chapter 4, Part 2, Clause 66 of the Bill

We have identified key concerns with Chapter 4, Part 2, Clause 66 of the Bill including:

- The decision of whether to proceed with the usual process under the Cultural Heritage Acts or the alternate process is entirely at the discretion of the proponent with no opportunity to consultation or engagement for Aboriginal and Torres Strait Islander parties
- The extremely short time frames for engaging with a proponent (minimum two weeks in most cases) and negotiating a part 3 plan (minimum 60 days) place incredible pressure on Aboriginal and Torres Strait Islander parties, who are frequently acting on a voluntary basis and may already have limited time and resources. Further, notices should not just be published online on the relevant Department's websites, they should also be placed in other locations where interested Aboriginal or Torres Strait Islander People regularly access notices, for example the Koori Mail
- Proposed new section 53DN of the BOPGA Act requires groups to negotiate together with the proponent with the aim of creating one agreement. This fails to recognise that Aboriginal and Torres Strait Islander Parties. Each Aboriginal or Torres Strait Islander party may have different interests and views on the proposal, and the potential cultural restrictions on sharing information amongst the parties and should be afforded the right to negotiate their own agreement, as under the current regime
- The Bill introduces a power to regulate a cap on the costs that can be paid to parties for participating in negotiations and to require detailed accounting to justify fees sought. Any costs reasonably incurred should be borne by the proponent without a significant administrative burden placed further on First Nations peoples, and placing a cap and

[5] See Statement of Compatibility p22

excessive administration requirements are neither necessary or justified and constitute executive overreach.

- The Bill gives only a 60 day window to nominate and negotiate an agreement, or the default plan will be mandated. This is an unnecessarily short time frame and there is also a risk that negotiations may be delayed for reasons beyond the control of the negotiating parties. It may also create a perverse incentive for proponents to delay negotiations, given the broad discretionary power exercised by the proponent's appointed coordinator.
- The Bill also explicitly prohibits the default plan from being amended or replaced, even where the negotiating parties agree on the changes. This prohibition is neither justified nor necessary.
- Of great concern is the proposed removal of the rights of groups or members of a group with traditional, historic or custodial interest in cultural heritage to seek injunctions or obtain stop orders under the Cultural Heritage Acts irrespective of whether or not a part 3 plan has taken effect
- Proposed section 53DU(2) further removes access to stop work orders under the Cultural Heritage for an activity that is part of the games project. This could effectively allow a proponent to circumvent the Cultural Heritage Acts. Such broad prohibitions are inconsistent with the overriding purpose and principles of the Acts.
- The usual supervisory jurisdiction of the Land Court in respect to negotiations of CHMPs is removed from the process and dispute resolution mechanisms are greatly watered down. The Bill provides that the parties may approach the Land Court for assistance in mediating negotiations if agreement has not been reached within 40 days and the parties jointly agree they could reach agreement through mediation. The Land Court has a discretion whether or not to offer mediation.

Concerns with the Default Plan

Specific issues with the Default Plan are:

- The timeframes for responding to notices in the default plan are incredibly short (10 business days), which can make obtaining instructions and making informed collective decisions difficult for Aboriginal and Torres Strait Islander parties. Similarly, the submission period of 40 business days for commenting on a draft cultural heritage plan is inadequate. The proponent can nominate a date by which an offer must be accepted at their choosing.
- The default plan affords the coordinator (a person appointed by the proponent) with an incredibly broad discretion where agreement is not reached with the Aboriginal or Torres Strait Islander party, in relation to the development of the final cultural heritage report, final masterplan, cultural heritage training and cultural heritage training materials. This is particularly problematic as the default plan does not afford any dispute resolution mechanisms.

- Further, if cultural heritage remains are uncovered, the coordinator alone has discretion to determine whether the discovery has cultural significance and should be afforded protection without consulting the cultural heritage party for the area with respect to this decision, who are simply notified of the decision, without any right to be heard.
- The default plan places obligations (eg. publishing notices) on the Director-General of the Department of Sport, Racing and Olympic and Paralympic Game, however the Director- General is not party to the agreement. This could lead to enforcement issues for the Aboriginal and Torres Strait Islander party.

Nature

Remnant vegetation and habitat, particularly for our endangered koala population, is shrinking across South East Queensland. We need to make sure that every Olympic venue is well sited and responsibly developed. We strongly believe that the potential environmental impacts of all types of development, whether for the Olympics, housing or energy, should be rigorously assessed.

We oppose the proposed siting of the Redlands Whitewater Centre at Birkdale. The proposed site abuts Core Koala habitat and there are critical unanswered questions about the water use requirements for it. The site should instead be used for conservation and/or sympathetic purposes that will be minimally impactful, such as a 'Redlands Wild Koala Refuge & Cultural Heritage Precinct'.

We are deeply concerned that the site could be exempt from planning and environment laws because we believe the site does not stack up against three of the four key criteria outlined by the State Government, in particular: Value for Money; Fit-for-Purpose; and Community Legacy.

In September 2023 QCC commissioned an independent report on ecological values threatened by development, in light of the SEQ Regional Plan being updated. Holding the Line: Reversing Biodiversity Decline found that only 31% of the region currently offers koala habitat. 30% coverage is the internationally and ecologically recognised minimum benchmark to ensure we can sustain healthy ecosystems. All remaining koala habitat should be viewed as critical, as there is not currently enough habitat for a healthy population to persist regionally in the longer term. This should sound alarm bells for Olympic developments in Queensland. Venues cannot risk pushing the iconic koala even closer to extinction.

To avoid the functional extinction of koalas in SEQ, we must not only save what habitat remains, but preferably restore it to at least between 40-50% of the region. Critically, this also means that what habitat we do have, must have connectivity, i.e. the ability for animals to disperse and move around habitat. Koalas require a large range per animal, and travel along the ground, thus safe connectivity is essential.

The greatest threat to koalas are inappropriately sited, poorly regulated, and designed development. It results in death by a thousand cuts as developments push further up against habitat and continue to degrade, erode and destroy it.

Yet this is precisely what the Birkdale Whitewater site would engender, as it is abutting Core Koala habitat, and is well known to locals as a 'safe haven for koalas and other wildlife.'

This is at odds with the Olympics movement reconfiguring to become more environmentally sound and leave positive legacies for host cities. This project does not meet community expectations that such Olympics developments be a model of best practice and sustainability. Exempting it from planning and environment laws, and further reducing appeal rights for developments that will adversely impact the koala, like the Redland Whitewater Centre will lead to terrible outcomes for nature.

Renewable Energy

We have been advocating for better community consultation and benefit sharing from large-scale renewable energy for several years. We are concerned that the Government has not progressed the Renewable Energy Zone framework which was consulted on over 2024 and which provides vital coordination at a regional scale. The REZ framework should be used to ensure efficient consultation and make strategic decisions on land use and environmental protection. On a project level, we support social impact assessment for large projects. We also support community benefit agreements with councils however we have concerns around the implementation of these amendments particularly:

- The scale at which these amendments will apply
- The application of these rules to existing applications
- The responsibility for community benefit agreements resting solely with the local government and also additional requirements on local governments to negotiate with each developer without a REZ framework to coordinate
- Consistency with the Government's rhetoric to align renewable projects with resources projects due to exemptions for "small" coal mines and a lack of formal community benefit sharing agreements for resources projects.

Scale

The proposed amendments would apply to all wind projects and solar projects above 1 MW or 2 hectares in size. The University of Queensland has a 1 MW rooftop solar array across its campus. While this would likely not be captured, it is indicative of the small scale of solar farms that would be subject to an entire social impact assessment and community benefit agreement process. This is likely to make it harder for local governments or other smaller operators, such as farms or businesses, to develop solar projects which would be genuinely community owned.

Existing applications

The proposed Bill raises serious concern that projects which have submitted properly made applications under existing laws will be deemed as not valid and have to go back to the beginning of the process, unless they are given an exemption. We are concerned that this will lead to delays, and further confusion in communities as to whether projects are going to be able to continue.

Consistency

Currently, in Queensland, coal mines which extract less than 2 megatonnes coal per annum (mtpa) do not have to undertake a full environmental impact assessment which can mean they do not complete a social impact assessment. This means that projects such as Gemini South, which have a disturbance footprint of 1,953 hectares could still be exempt from full impact assessment while a solar farm with a disturbance footprint of 3 hectares could have to do a social impact assessment.

No resources project is required to sign a binding community benefit agreement with local councils before submitting an application. We are concerned that this places higher requirements on renewable energy than resources in Qld. The MacIntyre wind farm in southern Queensland, for example, has a community benefit agreement to distribute $2.5 million over 5 years while the recent Olive Downs coal mine in Central Queensland only recently made $1m available for community partnerships.

This amendment will allow all wind and solar farms to be challenged by third parties. We support greater public participation in decision making but are deeply concerned that the Qld Government has scrapped the law reform commission review which could be the first step in removing community objection rights to minerals processes. We strongly urge the Government to maintain community participation and objection rights and look for ways to strengthen these as recommended in the law reform review.

Community benefit

We support the intent but are concerned that the individual project negotiation with local councils will not necessarily deliver maximum benefits for the community. We recommend the Government prioritise:

- developing support for local councils to develop community investment plans and
- Setting up infrastructure for regional benefit sharing to pool funds

Relying on individual project assessments and requiring only the local council to be involved could limit actual community involvement and therefore benefits, depending on the resourcing of the local council. We urge the Government to prioritise community investment plans, led and informed by local people, to develop and prioritise ideas for funding through community benefit agreements. This thinking lagged development in the Coal Seam Gas (CSG) sector and led to haphazard distribution of funding and missed opportunities for legacy project funding. However, the Western Downs is now a leading example, with many towns such as Miles[6] and Wandoan[7] having community investment plans which are a great starting point for community benefit negotiations and mean that individual proponents don't have to do the same consultation multiple times. The Western Downs Regional Council has itself created a Communities Partnering Framework[8] which sets out the expectations for businesses in the Western Downs to engage with communities. There is an opportunity to get in earlier with renewable energy development and set these expectations and investment ideas now. However, this needs to be supported beyond individual recompense for engagement with each project. The Government should advance this through the Renewable Energy Zone framework by declaring REZ in a timely manner and supporting communities within those REZ to develop community investment plans.

Additionally, funding should be made available to all local governments to conduct community investment planning, including areas outside of Renewable Energy Zones, because individual project engagement, even if it can be supported by the developer, is not likely to achieve the full extent of community benefits available.

A regional benefit sharing framework needs to be developed to pool funds from multiple projects is a key way to improve legacy outcomes for communities hosting infrastructure projects as larger projects can be delivered over longer time frames[9]. The REZ framework would need to set out proposed structures for regional benefit sharing funds to be held either by government or an existing development body, e.g. Foundation for Regional and Rural Renewal. There is a huge amount of interest in a regional benefit sharing scheme from developers and council which is being progressed in the Western Downs Regional Council. However, this process is at risk due to lack of funding to develop the benefit sharing scheme. The amendments as they are risk stifling innovation such as regional benefit sharing by requiring developers to get community benefit agreements over the line with only the local council early in the process rather than providing space for more innovative arrangements.

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6 https://www.wdrc.qld.gov.au/files/assets/public/v/1/business-amp-development/economic-development/community-partnering-framework/miles-community-investment-plan-2022.pdf

7 https://www.wdrc.qld.gov.au/files/assets/public/v/1/business-amp-development/economic-development/community-partnering-framework/wandoan-community-plan-2021.pdf

8 https://www.wdrc.qld.gov.au/Business-Development/Economic-Development/Communities-Partnering-Framework

9 https://cpagency.org.au/wp-content/uploads/2023/10/Regional-benefit-sharing-paper-2023.pdf

Renewable energy zones are also a useful framework for centralising consultation and minimising consultation fatigue. Many projects, of any kind, do not progress to completion even if they are approved. There is a real risk that projects will have to engage with local councils, and ideally communities, and sign community benefit sharing agreements before development application but may not proceed.

A REZ framework that would allow communities to set their investment priorities and empower them to determine contributions from renewable energy companies, would create a clear understanding of community benefit agreements if a project goes ahead without relying on individual project negotiations.

Priority Development Areas

Renewable energy zones can also map out areas of important biodiversity to protect corridors and enable species persistence. We are concerned about creating a hierarchy of approval process that drives development into priority development areas because these were not designed to minimise impact on nature or cultural heritage values. Instead, REZ frameworks should be developed including maps to balance existing land use and ensure connectivity and other biodiversity values are protected and then development should be encouraged into these areas.

Kind regards,

[redacted]

Clare Silcock

[redacted]

Queensland Conservation Council
On behalf of

Queensland Conservation Council

NQCC North Queensland Conservation Council

Gladstone Conservation Council

Cairns and Far North Environment Centre

Capricorn Conservation Council

gecko Environment Council

Wide Bay Burnett Environment Council — Protecting the Region's Biodiversity for the Future

Koala Action Inc.

DDEC Darling Downs Environment Council Inc.