AGRICULTURE, RESOURCES AND ENVIRONMENT COMMITTEE

Members present:

Mr IP Rickuss MP (Chair)
Mr JN Costigan MP
Mr SV Cox MP
Mr S Knuth MP
Ms MA Maddern MP
Ms J Trad MP
Mr MJ Trout MP

Staff present:

Ms H Crighton (Acting Research Director)
Mrs M Johns (Principal Research Officer)

PUBLIC HEARING—ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL 2014

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 15 OCTOBER 2014

Brisbane

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Committee met at 10.35 am

CHAIR: Welcome ladies and gentlemen. Before we start, can all phones be switched off or put onto silent. I declare this meeting of the Agriculture, Resources and Environment Committee open. I would like to acknowledge the traditional owners of the land on which this meeting is taking place today.

I am Ian Rickuss, the member for Lockyer and chair of the committee. The other members of the committee here with me are: Jason Costigan, the member for Whitsunday; Sam Cox, the member for Thuringowa; Shane Knuth, the member for Dalrymple; Anne Maddern, the member for Maryborough; and Michael Trout, the member for Barron River. These proceedings are being transcribed by our parliamentary reporters and are being broadcast live on the parliamentary website.

The purpose of this meeting is to assist the committee in its examination of the Environmental Protection and Other Legislation Amendment Bill 2014. The bill was introduced by Andrew Powell, the Minister for Environment and Heritage Protection, and subsequently referred to the committee on 28 August, with a reporting date of 22 October 2014. The committee's report will help the parliament when it considers whether the bill should be passed. I remind everyone that the bill is not law until it has been passed by the parliament.

I would now like to invite our first witnesses from the Property Council of Australia and Urban Development Institute of Australia to come forward.

MACLAINE, Mr Duncan, Director, Economic Research and Policy, Urban Development Institute of Australia (Queensland)

MACOUN, Ms Sarah, Co-chair, Planning and Environment Committee, Urban Development Institute of Australia (Queensland)

WILLIAMS, Ms Jen, Senior Policy Adviser, Property Council of Australia

CHAIR: I invite Ms Williams from the Property Council to make a brief statement.

Ms Williams: Thank you for the opportunity to come along today; we really appreciate it. The Environmental Protection and Other Legislation Amendment Bill seeks to change a number of acts. But the Property Council is primarily interested in the proposed amendments to the Environmental Offsets Act.

The Property Council has been working with the Department of Environment and Heritage Protection on a whole-of-government offsets framework for about the last two years. We have always been vocal supporters of the intention of the act to streamline offsets and simplify requirements, which delivers better outcomes not only for the administering agencies but also the proponents and better environmental outcomes. In saying that, we are disappointed to note that through the new framework environmental offsets are increasingly being seen as a new tax on development and proponents are being penalised for developing in urban areas—those which we have already identified as desirable for growth.

We believe the environmental offsets framework was hurried through to begin on 1 July. This has led to a number of issues with the legislation as well as with the policy and the regulations. In terms of the EPOLA Bill itself, the Property Council supports the intent of some of the amendments but does not support the actual drafting of many of the proposed amendments.

As outlined in our submission, we have a number of concerns as the amendments fail to address our fundamental concerns with the legislation. The amendments contain a poor choice of wording and unnecessary complexity.

Since the introduction of the bill, the Property Council, the UDIA, the Department of State Development, Infrastructure and Planning and the Department of Environment and Heritage Protection have been working together to try to figure out what wording should be used to give the legislation its desired effect. We have formed a working group which has met regularly. We were

promised drafting instructions which reflect our discussions and further changes by last Tuesday, 7 October. Unfortunately, we have not received those. What we have received is an outline of the policy intention of proposed further amendments to the legislation. I trust that the committee probably has not seen that work in progress yet. However, what we have seen we believe misses the mark as the legislation still does not meet its stated intention of removing the duplication of offsets.

In our submission, which you all have, there are a number of key issues. I will quickly run through them. The first is that administering agencies do not give notice that they have decided not to impose a condition, particularly the Commonwealth. They do not give you a letter which says, 'We have decided not to do this for these reasons.' It just does not happen. For the legislation as currently written to work, they would need to do that. The state obviously does not have the ability to ask the Commonwealth to deliver a notice saying that.

In order for the framework to operate as intended, the legislation needs to clarify that a Commonwealth notice under the Environmental Protection and Biodiversity Conservation Act that is not a controlled action or not a controlled particular matter is considered a Commonwealth decision not to impose an offset. This is the No. 1 issue for the property industry. If that is not recognised then the rest of the legislation will not work. That needs to be recognised in order for it to flow through. The document we received from the department yesterday still fails to address this critical issue.

New section 25A of the EPOLA Bill is intended to remove duplication where a lower level of government has imposed an offset condition and then a higher level of government has subsequently chosen to impose an offset condition or chosen that no offset condition needs to apply. This takes into consideration that you do not always go Commonwealth then state then local to get your approvals. What is meant to happen then is that the local government condition falls away in place of the higher level of government's condition. As currently drafted, that only works where a Commonwealth or state authority has chosen to impose a condition, not when they have made a decision that there should not be an offset. That needs to change and has been recognised by the department. However, again, in order for it to operate effectively, that notice from the EPBC Act of not a controlled action needs to be recognised as a decision not to impose an offset.

The other issue relates to the language in the act when it moved from being a bill to an act. Section 15 changed from 'consideration of the same or substantially the same impact and area' to 'the same or substantially the same prescribed activity and environmental matter'. Technically this introduces subjectivity into the legislation. One of the examples we have discussed is the koala. It is protected as a species under the national legislation. It is protected in terms of habitat under the state legislation. Technically they are different prescribed environmental matters. So you could find a situation where it is the same impact in the same area but there is duplication because it is technically a different prescribed environmental matter. The original wording made it clear that if it was one area it would be considered by all.

An additional issue, and the last one, which is outside of the amendments as part of the EPOLA Bill, relates to section 24(3) of the Environmental Offset Act which states—

In deciding the amount to be required as a financial settlement offset, an administering agency must calculate the amount in accordance with the environmental offsets policy.

As currently worded, it does not provide any discretion for local governments or the state to charge less than the maximum amount set out in the policy. If you look at the infrastructure charges framework, the state government sets a maximum and then local governments can charge less if they determine that that is what they want to do. As currently worded, they do not have that discretion. Similarly, the state chief executive might want to reserve the power to have that discretion to charge less if they want to. Currently under the legislation they cannot do that. That is an additional issue that is not in front of you in the EPOLA Bill.

As I have mentioned, we have been working closely with the departments to try to help make this framework meet its stated intention. We were very disappointed that we were not consulted on the EPOLA Bill before it was introduced. Since that legislation was introduced we have been to countless meetings and workshops, worked on case studies and legal advice and yet we are still facing further amendments that do not resolve the fundamental issues with the framework. I hope you will take our comments into consideration today when reviewing the legislation.

CHAIR: Thank you very much for that, Jen. Are you expected to have any more meetings with the department?

Ms Williams: We were meant to have one last Monday but it was deferred. We will I think, but none have been put in place yet.

CHAIR: Where the federal and state governments have not imposed any conditions on developers but the local government has, do you feel that local government should not have the right to impose any of those conditions on developers?

Ms Williams: No, it depends on what the matter is that they are looking at. The framework is about removing duplication—that is, where we are talking about the same matter. If the federal government has already looked at koalas and decided that there is no significant impact on koalas then the state and local government should not be able to then ask for offsets. If we are talking about a matter of local environmental significance that is not a state matter and is not a federal matter, then the local government should be able to do that.

CHAIR: That was what I was trying to get at. Duncan, would you like to say anything from the Urban Development Institute's point of view?

Mr Maclaine: Yes. Thank you for the opportunity to be here today. I am Duncan Maclaine, Director of Economic Research and Policy at the UDIA. We are the peak body representing the property development industry in Queensland. We represent small mum-and-dad developers right through to the large listed national and international developers and the consultants to the industry. Similar to the Property Council, our interests in the bill are in relation to the amendments to the Environmental Offsets Act.

We do support the intent and the premise of the offsets reforms that are being pursued by the government—in particular, to remove duplication and deliver green-tape reduction by collapsing five policies into one. We have been involved as a stakeholder in consultation for a couple of years. It is disappointing that the final act that was passed earlier this year and the amendments that you are considering have not delivered on the government's intent of removing duplication. Duplication affects the community because it puts an impost on developers when developing land for housing without actually adding any environmental benefit. So you have higher cost housing and less viable development with no added environmental outcomes. So, from both an industry and a community perspective, it is absolutely critical that we remove duplication between levels of government.

I guess in the opening statement I wanted to touch on two key parts of the act and the amendments in the bill that go to the heart of the duplication—section 15 and section 25 of the Environmental Offsets Act. I will give you an example. The state government may impose an offset condition for a matter but that development may subsequently have a decision made by the Commonwealth government on the same matter and the Commonwealth government may impose an offset condition. The state had already imposed a condition for the same matter. Nothing in the current act allows for that condition at a lower level of government to fall away when a higher level of government makes their decision after the lower level of government.

The amendments do go some way to fixing that problem where a higher level of government chooses to impose a condition but not, as Jen pointed out in her statement, where a higher level of government deems that there is no significant impact and chooses not to impose a condition. In fact, the words 'choose not to impose' are at the heart of the problem because a government does not actually in practice choose not to impose a condition. It is just that the condition does not appear.

CHAIR: Nothing happens.

Mr Maclaine: So the wording in the amendments to the act needs to ensure that simply the fact that an assessment occurred by a higher level of government and no condition ended up being imposed is in fact deemed by legislation to be a decision not to impose an offset and that, most importantly for our members, would include a decision by the Commonwealth on a matter of national environmental significance that it is not what they call a controlled action. So when a matter of national environmental significance is considered by the Commonwealth or a referral occurs, they determine whether they have jurisdiction. If they have jurisdiction, they may issue a notice saying 'not a controlled action'. That essentially means we do not believe there is an impact on a significant population for that matter of national significance. But unfortunately even under the amendments that would not be considered a decision not to impose an offset, and the state or local government could come in and do another assessment, or the assessment may occur concurrently or one after the other, and then impose a condition for the same matter.

So that affects both section 25 and section 15—section 25 where a higher level of government makes a decision at a later date and the lower level condition needs to drop away, or section 15 where they occur in an order of the higher level first going down and a lower level of government cannot then assess and impose a condition when a higher level of government has already made an assessment. So they are the two concerns around the duplication issue.

In terms of our concerns with the framework as a whole—and we have been speaking to the department about this in these workshops—yes, there are legislative concerns with duplication. There are also legislative concerns around flexibility to impose a financial settlement obligation that may be below the amount the calculator determines. For example, a calculator makes assumptions about the admin costs and the incentive payment that has to go to a landholder to deliver an offset, but in many circumstances the actual cost to deliver the offset may be well below what the calculator assumes is the case. So the ability for a local government or an agency to choose to impose a financial settlement that more reflects the real cost of delivering the offset I think is important. The amendments do not consider this at the moment. The act does not allow it, but we do know that the department has been considering this issue.

You asked a question earlier about local government offsets. We do have some concerns around the boundaries with which local government can operate with regard to offsets. For example, the state government has chosen to provide urban area exemptions for particular vegetation that is not endangered, so it might be of-concern or not-of-concern vegetation. Because the state has chosen to step completely away from even considering an offset for that kind of vegetation, it is not considered a matter of state environmental significance which then opens up the possibility that a local government could choose to seek an offset for something that the state has deemed not appropriate because you are operating in an urban area. So this matter could be dealt with through changes to the regulation or state planning instruments but also potentially in the legislation, but that is another issue that we have been speaking to the department about.

CHAIR: Are there any questions?

Mr KNUTH: That was a good presentation, Duncan. I want to get a bit of an understanding of the duplication with the three levels of government. How do you see it? Do you go to the Commonwealth first and then the state and then the local? How can that be worked out? Can the Commonwealth more or less say, 'We will take this responsibility'?

Mr Maclaine: I think it depends on a case-by-case basis. Sometimes you might refer to the Commonwealth at the same time you are having a development considered by state and local. I guess it is whatever circumstances that allow you to minimise the time frame for your assessment of all aspects of development across three levels of government. You may refer to the Commonwealth but they may take longer to make their decision, so the timing of the final decision might come one before the other. As we pointed out, it is not always the case that you get a decision by the highest level of government first. Even if a developer tried to ensure that they got the decisions in a particular order, they might not have full control over that.

Mr COX: In regard to the offsets, can you give any examples or demonstrate where duplication has resulted in excess costs? On the back of that, can you also give me an example of why a local government may wish to charge a lower offset than what the calculator has worked out, if that makes sense?

Ms Williams: A classic case of duplication is koalas. The state has their koala policy, which is implemented by the local governments. The local governments assess a development proposal and then they may have an offset requirement for koalas. The Commonwealth have listed the koala as a vulnerable species under the EPBC, so then they do their assessment separately. So as the development proponent you are doing the same development but you end up with offsets from the local government and from the Commonwealth government.

Mr COX: That is an excess.

Ms Williams: It is a double-up.

Mrs MADDERN: And you are saying they could be different kinds of offsets.

Ms Williams: It is the same thing.

Mrs MADDERN: I know it is for the same thing, but the local government might have said, 'Well this is the kind of offset we want,' and the federal government is saying, 'This is the kind of offset we want.' They might not actually be the same.

Ms Williams: Yes. At the moment they can be exactly the same, but under this there is the potential, because it is substantially the same prescribed matter, that there could be that still existing.

Mr COX: In saying that, isn't it in the interest of a local government—you mentioned the word 'choose' before; they may not remove the offset. I believe that this legislation was to get rid of the duplication in the offsets act. You do not have faith that a local government would take away their offset and say, 'You only have to pay once.' We are covered because of—

Ms Williams: The Commonwealth one.

Mr COX: So you do not have faith that local governments would look at that and common sense would prevail? Is that what you are saying?

Ms Williams: That is a major concern for us. Offsets have become a huge source of revenue for local governments. We have already seen through this framework that they are all considering what matters they can list as being of local environmental significance.

Mr COX: But, again, if there are two, that probably means the end of that development, so they are not going to get any money. They are not even going to get rates down the track.

Ms Williams: That is the case at the moment, but unfortunately that is not something that they are taking into consideration.

Mr COX: Where would local government want to charge less?

Ms Macoun: I could give you an example of that. If a particular local government has, for example, sourced at low cost an area of land that they thought was good to provide offsets, it may well be that they allow the developer to contribute to providing offsets on that land at a much lower cost than what the calculator works out. If they had gone out in a rural area and secured a big paddock of land at a fairly low cost, then to plant the trees and to maintain that might end up being quite a lower expense than what the calculator is producing.

Mr COX: Isn't there the ability not to do a money offset but to do a physical offset, because there are options to do either/or?

Ms Macoun: There is, but in the example I was giving you the local government is in charge of that particular offset, so the developer could not.

Mr TROUT: My question is to Duncan. Do developers have the opportunity to negotiate with all three levels in regard to the offsets?

Mr Maclaine: I guess with the state framework there is the option not to go down the financial pay-and-go path. You can negotiate and come up with a plan.

Mr TROUT: And submit that.

Mr Maclaine: Yes. The issue with that, though, is that that may work well for larger scale developments where they have the intelligence and the ability to sit down and go through that process, but for smaller scale developers the time, the risk and the amount of work that has to go into that means that it is not always viable. I guess that is why the calculator was brought in as a pay-and-go option, but it has to be a reasonable and useable option.

CHAIR: A trade-off.

Mr Maclaine: For local, there is always the ability to negotiate conditions. But, again, if you are going out and acquiring some land with the intention to develop in the future, you are going to do your due diligence, you are going to do a feasibility analysis and you are going to look to the local government policy and say, 'They could potentially under their policy charge me the equivalent of $10,000 a block to deliver certain offsets.' Now you might potentially be able to get a negotiated outcome down the track, but the simple policy that you can pick up in the planning scheme might kill the development before you even get to that stage because you look at the risks and you say, 'Well, we could be liable for this even if there is the potential for negotiation.'

Mrs MADDERN: Going back to the issue of the federal government not putting on a condition, is there any capacity in that agreement between the state and the federal government for the state to do the assessment on behalf of the federal government to deal with that issue in that agreement framework?

Ms Williams: I am not too sure of what that agreement framework will look like. From my understanding, applications under the Sustainable Planning Act are still a while away from being considered under that bilateral framework, so it may be but that is a long-term outcome.

CHAIR: Thank you very much for appearing here today. I call the Local Government Association and the City of Gold Coast representatives to come forward. We have some departmental people in the room so I am sure the minister will hear some of the comments as well.

LAWLER, Mr Huxley, Executive Coordinator, Environment, City of Gold Coast

TIMMS, Mr Logan, Team Leader, Strategic Policy and Intergovernmental Relations, Local Government Association of Queensland

CHAIR: Mr Timms, do you want to make an opening statement for the LGAQ?

Mr Timms: Thanks for the opportunity to appear before you today to discuss this bill. We will focus on two acts that are being amended—the Environmental Protection Act and the Waste Reduction and Recycling Act. Specifically with regard to part 3, the most significant of these changes is the replacement of current chapter 8 with a new chapter. This replaces the current process of applying for specific approval of a resource. As the community is no doubt aware, the current beneficial-use approval processes are generally considered onerous and often require more stringent management than if the material was managed and disposed of as waste. This can make it difficult for industry and also impact the local government sector. For example, one of our members has developed at great expense a new wastewater treatment plant and it is constructed next to a sugar-processing plant. Given the proximity of both these facilities, the council is considering whether it is economically viable to construct a waste-processing facility that can provide recycled water and biosolids to expand agricultural areas to the north of that council area. A key consideration, of course, is the cost of compliance with the regulation of the licensing. These reforms could help councils with their financial sustainability, which is a big issue at this point in time.

While it is not contained directly within this bill, it is certainly related, and that is the recent repeal of certain aspects of the environmental protection waste regulation. This had to do with waste management generally and waste receival and disposal. These provisions covered matters such as unlawful disposal of waste at landfill facilities—for example, illegal asbestos transfer and requirements for storing general waste in waste containers. These are important regulations that ultimately support good public health outcomes. While we understand the government's reform agenda to remove unnecessary red tape, it seems that these particular regulations lend themselves to state-wide consistency. If, as part of your considerations we could look at that matter, it would be helpful.

In relation to the Environmental Protection Act, we acknowledge that for the most part these are administrative but there are two issues. The first relates to the general duty imposed on local governments to report serious or material environmental harm in relation to contaminated land, and the second is the apparent reduction in opportunity for local government to comment on various iterations of the environmental impact assessment process. Clauses 123 and 125 appear to us to have the practical effect of significantly expanding the existing duty on a local government, for example, to notify the relevant state agency if it becomes aware that land in its area has been or is being contaminated by a contaminant the local government knows is a hazardous contaminant. The existing duty appears to us to have been expanded so that we now have to notify the relevant state agency when virtually any event occurs. It appears that the nexus between an activity and the event also seems to have been broken. Because it needs to be advised within 24 hours, we do not quite understand the rationale here. Whilst the explanatory notes justify this initiative as ensuring consistency with other provisions of the act, we do not understand the policy rationale and we seek your concurrence to maybe wind back that proposal.

Finally, clauses 23 and 28 insert new provisions removing the requirement for proponents of an EIS from having to repeat steps in the EIS process to public notification. We have concerns that perhaps local government will be left out of that process through the various iterations.

CHAIR: Huxley, would you like to make some comments from the Gold Coast point of view?

Mr Lawler: Yes, thank you very much. It is a pleasure to be here this morning to make a presentation. The City of Gold Coast is obviously a local government and strives to achieve a balance between the environment, social and economic stimulus at the moment. If I could start by describing specifically our submission and then, if you are willing, move into offsets more generally and probably answer some of those questions that you asked of former witnesses.

The definition of a matter of local environmental significance as defined by the State Planning Policy June 2014 refers directly to schedule 2 as a matter of local environmental significance from the Environmental Offsets Act 2014. The definition of a matter of local environmental significance within the Environmental Offsets Act 2014 then refers to section 10(4) of the act, and that is a section that does not exist. In fact, there is no definition of a matter of local environmental significance within the act. There is, however, a definition of a matter of local environmental

significance in section 5(4) of the Environmental Offsets Regulation 2014. However, this is not called up by other relevant pieces of legislation or policy. The definition within the regulation reads—

matter of local environmental significance does not include a matter of national environmental significance or a matter of State environmental significance.

That lends to the point about duplication, which we can come back to. Clause 16(1) of the Environmental Protection and Other Legislation Amendment Bill 2014 is proposing to remove the definition for a matter of local environmental significance from the Environmental Offsets Act 2014. This will leave the State Planning Policy 2014 without a definition of a matter of local environmental significance.

Administrative matters aside, officers from the City of Gold Coast consider there is a need for a definition of a matter of local environmental significance within both the Environmental Offsets Act and the State Planning Policy 2014. A matter of local environmental significance, as may be identified, is the key value used for the identification and protection of locally significant environmental features that are not otherwise captured as a matter of national or state significance. Removal of the definition of local environmental significance from both the act and the State Planning Policy will result in a large amount of uncertainty around the existence and potential to protect these locally significant features. It is therefore recommended that a clear definition of a matter of local environmental significance be included within schedule 2 of the Environmental Offsets Act. These values are important because they have intrinsic value and they lend to the liveability of a city or a local government area that is not always a focus for the state or federal governments. That is why it is important that we have that.

In relation to matters of duplication, there is the potential for a perverse outcome to result if, as it currently stands, the federal government deems an area, say, that has koalas in it as not requiring controlled activity. So they are making that assessment based on the fact that koala species are present on the site. If we remove the duplication, what I believe has been suggested is that therefore state government does not have an interest in that property or piece of land and therefore the local government does not have an interest in that property or piece of land. However, if the federal government deemed that there are no koalas present on the site, the state government would have an interest in the habitat that is present on the site. So the federal government is not considering the habitat. If the state government is not considering that koala habitat is there or that is of interest, there may be habitat present on the site but a vast range of other species will be using that habitat and the local government would have interest in ensuring that those interests for other species are present.

So you can see a perverse outcome might be that a proponent asks for an assessment by the federal government to determine whether or not there is a controlled activity on the site. The federal government deems that there are no species on the site for which they need to control any activities, and if duplication, as has been suggested, therefore results then the state does not have a say in that piece of land and nor does the local government. So that land could then easily be removed, changed, felled and development could ensue without ensuring the protection of other species and other environmental values.

CHAIR: Thank you. I have a question for you, Logan. You referred to the new requirement that local governments notify the state when contaminated land events occur. Surely that would be in the best interests of local government areas to do that. The state has some pretty capable people in that area. I am from the Lockyer where we have smaller councils. Wouldn't that be in the best interests of those areas?

Mr Timms: I do not think anyone would dispute that fact. It is what constitutes the event. For argument's sake, say we have a closed landfill and maybe something is leaking. How can a local government possibly know something that is going underground just because of a rain event or something along those lines? It is not opposed at all to the policy position that is about that notification period—

CHAIR: Twenty-four hours.

Mr Timms: Currently it is linked to an activity. If you are on land doing something and there is leachate, there is this nexus. But if it is so broad I just do not understand how local government could keep abreast of these events.

CHAIR: So you are saying that the act is too broad and the local government association or authority would have to have some type of notification of the event as well; is that it?

Mr Timms: Yes. From our initial reading of the proposed amendments, that is not the case. It seems very difficult to comply with that duty.

CHAIR: Okay. So it needs some clarification.

Mr Timms: Not that we do not want to comply, just to clarify that.

CHAIR: So you are saying that the Kirra groyne, for instance, is important to the Gold Coast City Council but it is not that important to the state or the federal government. Is that the type of example you are using of something that is relatively important to a local government area?

Mr Lawler: That is an infrastructure example that we could apply. Others would be local roads. We have state designated roads and local roads. The local area has a strong interest in its local roads to ensure that the general traffic moves around and works appropriately. If we just relied on the state roads, the interests of that local area would not be covered. Likewise, as I mentioned earlier, the city has a strong interest in ensuring its liveability and that it has values for not only this generation but future generations. That has economic impacts also for the city. For example, if the City of Gold Coast loses some of its environmental values, it might potentially lose tourism dollars and it might also potentially be less attractive for people to move to as a lifestyle choice. Therefore, there might be less rates generated from the city and those types of things.

CHAIR: So this is the big-picture stuff that the feds or the state are not quite as interested in as the local government is—whether it be the Currumbin bird sanctuary or some other small local habitat area—and you are saying that is a real problem if you do not have the right to—

Mr Lawler: Absolutely. Because they are higher levels of government, it means that by definition I would imagine they would have a broader scope of interests so therefore they would not understand the local values, or they may understand them but not have an interest in protecting them as the City of Gold Coast does.

If you could bear with me, at the moment the City of Gold Coast has submitted a draft planning scheme—the new City Plan 2015. That has just been out for consultation with the community and we are working through the submissions. The state government approved that for notification on the basis of this environmental policy and we were going to use environmental offsets. So what we are saying is that across the city of Gold Coast we have three or four thin strategic corridors that stretch from the coast to the hinterland. We are looking to protect those environmental areas. We are using offsets to enable that to occur.

So if you are outside of those strategic corridors in the urban area, the vast majority of it, and you have a low-quality vegetation, you can bulldoze that vegetation and there is nothing required of you and you can go ahead and provide development. If you have medium-quality vegetation that the city has an interest of—that is, it has between about 10 or 30 per cent preclearing extent left in the city, so it is medium quality—you can offset that. You can avoid, protect or mitigate or offset that vegetation, so a developer can go ahead and can clear-fell the site but it is required to replace those values with offsets. What the City of Gold Coast is proposing is that you put those in our strategic corridors. That is based on a benefit because there is no point in us having a little piece of medium-quality vegetation in the urban area that is disjointed from other areas so it has minimum ecological or biological value. If you are placing it in our strategic corridors and you are required to replace it there—either by a financial contribution and we go to the state calculator or you provide it as offsets yourselves—that enables us to have some strategic corridors that provide biodiversity environmental benefits and also provide amenity for the general community. It also enables the development proponent to go ahead and it allows economic stimulus as well in the city.

Ms TRAD: Can I just have your view on the offset calculator? Do you think it is something that the council can work with?

Mr Lawler: The council can work with the offsets calculator. We interpreted the legislation that you could seek less than what the calculator is seeking, so our view is a little bit different than previously expressed today. There might be a benefit if a local government, as was stated before, wanted to charge less for environmental offsets. But what happens then is, if the local government is charging for environmental offsets and it chooses to charge less than the state is calculating, that enables the local government to provide those offsets but they are going to have to use other sources of revenue to top up to ensure that those offsets are delivered like for like or at the appropriate ratio that the state is suggesting, like a three for one replacement.

The local government is the appropriate level of government to be able to make that decision. If they want the general rates revenue to underpin or fund offsets and enable development to ensue at a much lesser rate or at a lesser cost than otherwise would be the case—in other words,

externalise those costs to the city and the city's ratepayers—that is a decision for the city to make. I do not have any problem with local governments charging anything less than what the state government calculator says.

Mr COX: I have a quick question and you might have covered it. In regard to previous questions I have asked, do you have concerns with the duplication? That is, if the Commonwealth put an offset in as well as the state or local government, wouldn't common sense prevail and you would think that, again, it is about getting that development to happen without imposing an unrealistic cost while still covering laws? Do you think that should just play out? Or is there a need to say, 'Once one offset is made it overrides everyone else. That is it. The others cannot impose one'?

Mr Lawler: No. I do not believe that. I think the issue here is what is of interest to the federal, state and local governments. So we might be talking about the same patch of bush, for example, but they might have different values. So the feds could look at it and say, 'There is no koala species in there so we are not interested. It is not a controlled activity. You beauty.' So the developer is fine and they go to the next level. The state government then looks at it and says, 'Yes, it is koala habitat but in this instance we are not prepared to ask you for an offset. We are happy for you to do what you want with it. Go ahead.' We might look at it and say, 'There is less than five per cent of that vegetation community left in the city of Gold Coast and that is a real issue for us, so we ask you to provide an offset for it.' That is how it would work in the city of Gold Coast. If you have got vegetation between 10 and 30 per cent left of preclearing extent in the city and you are outside of our strategic corridors and in the urban area, we would ask you to offset it and put it in our strategic corridors. Those are very thin corridors if you look at the total percentage of coverage—very thin for the city—so development can ensue throughout the urban area but we are seeking to maintain biodiversity corridors.

So I believe that it is important that the legislation gets this right and that it allows the federal, state and local governments to protect values that are important to them. If that is the case, then it is up to the local government and the governance around that to determine what they think those local interests are. So the local council will make those decisions and that will go through a transparent and public process to determine what those values are and how important they are.

Mr COX: It could work both ways, too.

CHAIR: Thanks very much for making your presentation today. It was very important to hear from local government.

POMEROY, Mr Matthew, Queensland President, Australian Contaminated Land Consultants Association

CHAIR: Welcome. Do you want to make a brief opening statement?

Mr Pomeroy: Thank you very much for letting me present today. I am the president of the Australian Contaminated Land Consultants Association here in Queensland. We represent 24 member companies—consulting firms, the majority of individuals that operate in contaminated land in Queensland. The discussion today will be relating to the removal of the disposal permit system as proposed under the amendments in the EPOLA Bill and some of the challenges that we see in moving forward with that.

We had provided a submission as part of an earlier response to an impact statement that related to the disposal permit and the proposed removal of the system. The disposal permit system is individual to Queensland. Other states obviously do not have this type of system; they have a number of other processes and things to accommodate instead. I understand obviously why it is seen as a burden in comparison to other states. However, in relation to the initial introduction of the disposal permit system and why it has been used so rigorously here in Queensland, the concerns that we have in regards to why this was initially implemented still exist and we are yet to get a response about how those concerns will be adequately managed. I will just run through those.

The original disposal permit system, or the soil disposal permit system, was for basically managing contaminated soils from the likes of service stations and gas works—a great stack of different contaminating activities. The purpose of that initial disposal permit system was to prevent: the removal of contaminated soil to clean sites because obviously we do not want to contaminate those; the removal of contaminated soils to other contaminated sites increasing the cumulative risk to those sites; the inappropriate characterisation of contaminated soils, so it was managed by a government department to make sure it was adequately categorised; the inappropriate trucking and handling of contaminated soil; and basically a lack of understanding at the landfills about emerging contaminants and some of the types of impacts from contaminants that they may not come up against every day. The management system within EHP was derived to try to manage some of these risks.

The general environmental duty still remains and I think the push towards having that manage the risk associated. That general environmental duty has always been there and already we have seen over the years with the disposal permit system a number of illegal disposals of contaminated soils and the like. So as to how that could be enforced I guess to the level that it would need to be, as well as the amount of compliance processes that would need to be put in place, it is not understood how that could be implemented here in Queensland.

Although we are not anti removal of the disposal permit system, I guess the bit that is missing is the policy by the regulator on how these risks will be managed—the likes of the spot site audits by EHP technical staff, regular EHP technical review of landfill acceptance and the like, and increased fines or equivalent for disposal of contaminated soil to clean sites. So one of the things we see happen most often is that we will note some contaminated soil and we will say, 'It's at a level suitable for industrial use,' and the removalist company comes back and says, 'We have found a perfect location. It is on a school ground.' We often see a lot of those types of scenarios. How that would be managed outside of a disposal permit system or a movement of contaminated soil is unknown.

The other key aspect relates to the sheer amount of waste. We have waste reduction targets set here in Queensland. By removing the requirements under the waste reduction targets and the like—they talk about obviously reuse and disposal as the last option—by having landfills manage the system through waste tracking and the like, we cannot see how those waste targets can actually be met.

The other aspect is that, unlike other states that impose large levies on contaminated soil, we do not have those levies here in Queensland. For example, the removal and disposal of similar types of material across the border in New South Wales would incur costs of $1,000 or $1,500 a tonne. Here in Queensland we might be looking at $30 to $50 per tonne for disposal. There are two aspects that come with that. It becomes cost efficient for contaminated soil to be moved across the country and be disposed in our landfills, and the end result of that is that obviously we are picking up a lot more contaminated waste than we would otherwise. The other thing is that the price of

waste disposal locally here as our landfills fill up becomes a burden on our local industry. In the past there was an informal control system at the border through this disposal permit system whereby, before the landfill could accept, there was a disposal permit acceptance that was required. Without that system, we do not know how that gate I guess can be controlled. They are the main points.

CHAIR: Thanks, Matthew. I assume that your Australian Contaminated Land Consultants Association would include people like Coffey, for instance.

Mr Pomeroy: Correct. We have the likes of AECOM and URS.

CHAIR: Do you have small, single operators as well involved in your association?

Mr Pomeroy: Yes, that is right. We have one- and two-people operators as well.

CHAIR: So it is a diverse range. A lot of the contaminated soil—and, as you say, it is surveys and all those sorts of things and there are the major players. I represent the electorate of Lockyer which goes right down to Ipswich where the Ebenezer dump is. I remember the contaminated soil that came off Stradbroke relating to a ship was dumped there. Are you saying that our landfill operations are managing it at the moment but do you feel that there could be a problem in the future if more regulation is not put in place?

Mr Pomeroy: The way it is managed at the moment is that there is a gate that the contaminated soil is sitting at in terms of Environment and Heritage Protection through the disposal permit system. So by removing that gate, it sits with the landfill. I look at it like this. I have a labrador dog. If I put a bucket of food out there for him that will last a week, will it still be there in a week's time? It is that sort of analogy.

CHAIR: With the lack of a disposal permit and it costing less in comparison to what is done in New South Wales—$1,000 or $1,500 a tonne—with us having a lot cheaper disposal rights, do you feel that is part of the problem?

Mr Pomeroy: Obviously by removing the disposal permit system we would lose that control of material that comes across the border. Obviously we operate in northern New South Wales as well. There was a decision about whether we could remediate onsite through land farming or the like, which might cost in the order of $100 to $200 a tonne, dispose it to a landfill down there at $1,500 a tonne or move it across the border at maybe $100 per tonne in truckage plus $30 a tonne to dispose. The easy option is there: rather than remediate it, just dispose it to landfill.

CHAIR: The waste companies up here have not picked up on the fact that stuff coming from across the border is a captured market and they can increase the price.

Mr Pomeroy: I think the risk there is that potentially it will raise the price across the board. It will be the same piece of dump, whether it is somebody locally here who needs to put in material or somebody over the border. I do not know whether there will be a discrepancy between those.

Mrs MADDERN: This legislation proposes to remove soil disposal permits and replace them with waste-tracking requirements, and you have not referred to the waste-tracking requirements at all.

Mr Pomeroy: The waste-tracking requirements have somewhat always been in play. They require trucks to have covers and that a tracking system be in place. Purely it is about where the material goes to—it is not about controlling what material goes in—and whether it can be managed in a manner. We obviously want to try to reduce the amount of soil that is disposed through mediating and the like. The waste-tracking system does not look at those types of things. Previously, the control sat with the regulator and the regulator would look at a disposal permit and say, 'Have you considered all these other options first? Have you considered disposal on site? Have you considered remediating the material? Have you considered all these other options prior to effectively this waste-tracking system?', which is a landfill and trucking company recording movement of regulated waste across the state. Yes, it may deal with the matters that relate to disposal of contaminated soil to clean sites, but in terms of how much material ends up in landfill we cannot see that that system would work.

Ms TRAD: That was really my question—about whether or not the tracking system can adequately capture the quantity, the accumulation of contaminated land coming in, what is happening to it and where it ends up. If the tracking system cannot do that and the disposal permit system is removed, how do we know how much is coming in?

Mr Pomeroy: I think it will be able to work out how much is going into the landfills. How much that goes into the landfills that does not necessarily need to go into the landfills—that will be the bit that will be missing.

Ms TRAD: Thank you.

CHAIR: Is there not a new fee that is going to be implemented in New South Wales relating to where the contaminated waste comes from?

Mr Pomeroy: At the moment the cost of moving waste, even from Victoria and the like, becomes viable to move it here to Queensland when you start looking at the disparity of, as I said, $1,000 a tonne. Trucking is not that expensive to move the site material. We obviously will have all the extra truck movements and so on that come with that.

CHAIR: Thank you very much. That was very informative.

GARLAND, Ms Nicola, Advisor Environment Policy, Queensland Resources Council

HAYTER, Ms Frances, Director Environment Policy, Queensland Resources Council

LEMIRE, Mr Nathan, Policy Adviser Queensland, Australian Petroleum Production and Exploration Association

PAUL, Mr Matthew, Policy Director Queensland, Australian Petroleum Production and Exploration Association

CHAIR: Matthew, would you like to start with an opening statement for APPEA?

Mr Paul: We do not have an opening statement.

CHAIR: What about Frances?

Ms Hayter: Thank you very much to the committee for the invitation to appear. I think we took out the award for the longest submission. Hopefully you do not get too bored listening to us talk about it all over again. Obviously, the bill amends a number of acts. Primarily our submission focused on the amendments to the Environmental Protection Act and the Waste Reduction and Recycling Act.

Firstly, with regard to the EP Act, we obviously support the stated policy intent as outlined in the objectives of the bill, notably to undertake green-tape reduction reforms. However, we are not entirely certain that it achieves that in a number of areas. We do thank DEHP for the opportunity to discuss the various contents of the bill over the last six months. However, we are not entirely certain that we actually achieved a number of significant changes to it. Specifically in regard to the waste reduction act, we went through a good process. We were disappointed to see that there were some key areas we agreed with which effectively did not form part of the bill and there were some cases that were the opposite of the actual bill that was tabled. However, I will briefly mention those as we go on. We do recognise, again, that DEHP did meet with QRC and our colleagues at APPEA on those.

Just quickly, I will run through our main issues with the bill. The first one is the listing of environmentally relevant activities on environmental authorities. The act was never intended for that listing to occur. It was supposed to be based around the concept of resource activities. We feel that the recent moves by the department to start listing those in terms of detail about the exact nature of those activities and the scale and the impact of those activities is actually counter to that principle. The very definition of resource activities should capture all of those individual acts. In fact, the conditions that are placed on the environmental authorities should cover the impacts of all of those individually. What we have seen is that it has actually caused an increase in green tape for a number of companies so that when they make amendments to those activities or put new ones on there or change them, they are having to go through a full environmental authority amendment process. That has not actually resulted in changes to their conditions. We have an unnecessary process there which should be based on outcomes.

The second issue is in relation to the increasing penalties within the act. We have no problems with the principle of increasing penalties to bring equity across Queensland, but our biggest concern remains—and, again, we have discussed this with DEHP many times—that the definition of environmental harm around which the increased penalties are based has not been changed since the act was introduced 20 years ago. We also have concerns with a number of the other definitions related to environmental harm. We seek some detailed discussion on improving those before the penalties come into effect.

Briefly, in relation to the Waste Reduction and Recycling Act—and APPEA will give a bit more detail on a couple of areas—the first one is that industry was very keen in the transfer of the beneficial use approvals process that companies themselves or industry itself would be able to approach the government and ask for a new BUA rather than having to depend on the government to turn in the opposite direction, and we thought we had achieved that. However, that did not go into the bill, but we are having discussions now about a process for at least there to be a regular call for new approvals.

Another issue is that the act currently says that if there is a misuse of what is now no longer a waste by the person who has received the waste, the supplier should be held accountable for the impacts that they may have caused on the environment. That is clearly unacceptable. Once it has

left the building, it is the responsibility of the person who uses this. As I said, we have discussed these concerns with the department and we have been given some indication that they will be improved.

Our final key issue is with respect to the number of places in the bill where they talk about some serious extension of time frames for the assessment of projects. Again, we do not believe that achieves the policy intent of reducing green tape. In fact, we are actually looking at ways to improve time frames. One of the most notable examples of this is an increase in a range of time frames for the assessment of projects and, in particular, at the stage of an EIS where an applicant responds to submissions from the public and he actually considers whether to allow the project to proceed to the next steps. This is not an assessment decision but just a decision about whether there has been an adequate response by the company. The department already has 20 business days, but the bill as currently drafted asks for another automatic 20 business days. So we have gone from four weeks to eight weeks, and we do not believe there is any benefit to the community and it impacts on the proponent. Again, we have had some indication from the department that they will be looking to change that and reconsider whether or not some of those extensions should exist. Thank you for that opportunity.

CHAIR: I will start off with a question. Why do you not think that some of the supply chain management responsibilities that work across-the-board in most other industries would relate to the resource companies in relation to their waste?

Ms Garland: I think this was with respect to when the product has been passed from the producer to the user. It depends if the product is being faultily produced or whether it is purely that the product is being used to cause environmental harm. If it has been a result of a faultily produced product, then the producer should be held accountable. However, if it is just that it has been used and it has caused environmental harm—so a good example might be associated water from a CSG operation. If it has been produced and it has met the conditions and it causes harm being used down the process, it is not about holding the producer accountable; it is holding the user accountable, and there are already protections under the EP Act.

CHAIR: What about the drill mud or whatever it might be? What if the Dodgy Brothers turn up and say, 'We'll do this for half the price of the bloke who's doing it now'? Is there not some responsibility on the company if they say, 'They are taking that away at a price that seems to be unsustainable, but we'll accept it'?

Ms Garland: If there was a general code that you would have to comply with, there would be conditions in that code for how you refine the drill mud. If you have met the conditions of that code, then you should not be held accountable for how it is subsequently used.

CHAIR: Surely that is part of supply chain management. Like I say, the Dodgy Brothers have turned up and said they are going to take away your drill mud for half the price you can get it done for as a resource company.

Ms Garland: As long as they are complying with the code. If the Dodgy Brothers are not then they should be held accountable, I do not think—

CHAIR: The Dodgy Brothers should be, but so should the CEO of the resource company because they know the Dodgy Brothers are doing this. As soon as it drives out of the yard it is not out of their responsibility, is it?

Ms Garland: I think the definition of who is still the refiner or the person who is undertaking the refining of the product—if the Dodgy Brothers are still refining the product, they still fall within the scope because they are not using the resource; they are refining the product to turn it into something else. It is about making sure that it is clear at what point the waste becomes a resource.

What we want to see is that the Dodgy Brothers should be captured, but the farmer who has received good water that has been produced and it just happens to be part of the way in which environmental harm might be caused—you should not be capturing something that has been produced well. It is that drawing of the line at which point it is a waste or a resource that I think—

Mr Paul: If I may, the main example that we are talking about—for the petroleum industry anyway—is where a CSG company is treating water to the standard set by the government for irrigation, for example, and then it gives or sells that water to a third party such as a farmer and that farmer then uses that water as they would use any other water. What we are saying is: if we are acting as a water provider and if we are meeting the requirements set by government then, as per any other water provider, we should not be responsible for what the user does with that clean water. We have that concern. We understand that the agricultural bodies have that concern too, because it extends the regulation to the water users and then it would make—

CHAIR: Yes, but you are picking a specific product. As I just said, what about drill mud?

Mr Paul: If we were talking about drill mud, I think a comparable situation in that context would be if we had treated the drill mud to whatever the code said for the government and then we had given it to a third party. So we had treated it to the code as required by government; it is not paying someone else to do it. I can understand the sorts of things you are raising, but we are talking about where we have achieved the clean standards set by the government.

CHAIR: I am sure most of the coal companies do not recycle their big tyres. They just bury them because it is cheaper and they are stuck out in the middle of nowhere with big holes.

Ms Hayter: I think it is important to recognise that that comes back to the definition of environmental harm. I think recycling is great, but if you are a very long way away I would suggest that actually burying your tyres does not cause harm.

CHAIR: I think the Queensland Resources Council has to be careful when it starts to try and walk away from their chain of responsibility at the other end and how they manage it as well, because waste is a bit different in that a lot of the money is upfront. The cost is at the back end, not at the front end. When you are doing a resource project, a lot of the cost is at the front end and your money is at the back end, whereas with waste it is the other way around. You pay someone to take it away and they have to manage the issues there.

Ms Hayter: I think it is about where the line is drawn and who causes the harm. I recognise that there is a moral imperative for a company to make sure that they are not selling it to Dodgy Brothers, and so it does not end up reflecting back on them. But where do you draw that line between personal responsibility or company responsibility in terms of penalties and the way the act works?

CHAIR: Like I say, look at a lot of other legislation. The chain of management goes right through the system, so just be careful.

Ms TRAD: Ms Hayter, in relation to the offence definitions which you touched upon, could you just elaborate on those a bit more in terms of the QRC's issues in relation to them?

Ms Hayter: The easiest one is the definition of 'material' and 'serious environmental harm'. The definition for 'material' is currently $5,000. That was 20 years ago, and as we know you do not get a lot for $5,000 these days. So if the cost to remediate what may have happened is more than $5,000 then you can be prosecuted for material environmental harm, and that particular penalty has gone up by three times. Our suggestion is that that needs to be reconsidered because I would submit that $5,000 is not a particularly high amount of environmental impact. The other main one is the definition of 'contaminant', which is very broad and the way it is currently worded could conceivably even capture something like clean water.

Ms TRAD: What would you like to see the $5,000 increased to? Do you have a figure?

Ms Hayter: That is a good question. We have had a lot of discussions with our companies about how you would go about setting that bar, and I would hate to actually put a number on it. I think the point is that it is critical that we start to have the discussion about it, which we have been unable to do.

CHAIR: Do you have any idea what it is in other states?

Ms Hayter: It is about the same. We were hoping that it was not about the same, but when we did our research we found that it is about the same. But that does not mean that they are right.

Mr COX: It seems through the submissions that the QRC has the increased role of auditors for contaminated land auditing and documentation, and the duty to notify was an issue you raised. In terms of contaminated land, why do you think there has been a low take-up of auditor services under the existing voluntary scheme?

Ms Hayter: Sorry, low take-up of?

Mr COX: Of auditor services, people that do the auditing.

Ms Hayter: Do you mean formal registered auditors? Is that what you mean?

Mr COX: Yes.

Ms Hayter: Where the act has been changed now to make it compulsory to have formal auditors?

Mr COX: Yes. There does not seem to be an increase in people taking those positions up to ensure there are enough of them around to do the auditing.

Ms Hayter: I think it is just that the process for accreditation has not got to the point where there is a sufficient pool, if indeed there are a sufficient number of people out there. I think the issue is twofold: it is premature to have something which is an absolute requirement unless you have enough people out there to be able to do that; and there is also the potential for if you give a bad report, will you be employed again? That is always the problem where have you that sort of restriction.

We have suggested that if you have a suitably qualified person—and of course they have to demonstrate their skills; it does not matter whether they are formally accredited under the government's list—they should have suitable qualifications including the amount of time they have done things. I think it is quite restrictive and maybe does not meet the market reality.

CHAIR: Thank you very much. Does APPEA have anything further to say?

Mr Paul: We will take our submission as read. The key concern that we had was to do with the issue that we were discussing about the end-of-waste codes. As I said, we would just like to be treated in the same way as any other supplier of clean water in that context.

CHAIR: I do not think supplying clean water is going to be an issue; supplying dirty water might be.

Mr Paul: Yes, I think that is a separate issue.

CHAIR: Thank you very much for making your time available for us. It is always good to have industry groups coming in.

Committee adjourned at 11.52 am