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Planning Reform Group
Department of Infrastructure, Local Government and Planning
By email to: bestplanning@dilgp.qld.gov.au; edoqld@edoqld.org.au

Dear Planning Reform Group

SUBMISSIONS ON DRAFT PLANNING SUPPORTING INSTRUMENTS

Thank you for the opportunity to make a submission on the draft Planning Supporting Instruments.

Birds Queensland (BQ) is a non-profit organisation that finances its own activities which include conservation and research-oriented projects, educational activities, and activities which provide opportunities to meet with other people interested in birds and their conservation. We have a particular interest in how Queensland's planning laws impact upon the conservation of our native birdlife for the benefit of future generations.

Governments of the world are in the grips of dealing with a carbon pollution crisis of enormous proportions. That crisis has come about through production and development processes that have accorded insufficient weight to environmental factors, thereby disrupting the natural carbon cycle by increasing carbon output and reducing the efficiency of carbon removal processes. Development corporations and their lobbyists have successfully influenced governments to diminish the role of broad community comment in the planning process in favour of profit-driven development voices. These corporations have been using, and continue to use, accounting and reporting procedures that either ignore or minimize their impact upon the natural world. Public sector planning authorities have also underpinned this false accounting system which, according to ex-Deutsche Bank economist, Pavan Sukhdev, favours "physical capital" over "natural capital or ecological infrastructure" in the form of forests, wetlands, rivers, coral reefs etc.¹ This development and production pathway has now led us to the point where expensive action is required to preserve the planet's habitability. In terms of our birdlife, ornithologists are predicting a wave of bird extinctions that, here in Australia, may cost \$19.8 million per annum to try and mitigate.²

In the Directions Paper provided by the Government in May 2015, it states:

'Queensland's planning system should support effective and genuine public participation in planning, whilst providing for efficient and consistent decision making that instils investment and community confidence.'

¹ Pavan Sukhdev, *Corporation 2020: Transforming Business for Tomorrow's World*, Island Press, 2012, p. 217

² Garnett, ST, Franklin, DC, Ehmke, G, VanDerWal, JJ, Hodgson, L, Pavey, C, Reside, AE, Welbergen, JA, Butchart, SHM, Perkins, GC, Williams, SE 2013 *Climate change adaptation strategies for Australian birds*, National Climate Change Adaptation Research Facility, Gold Coast, pp. 4.

Simply put, the proposed Bills before the Queensland Parliament along with the supporting instruments do not fulfil this desire.³ Neither public participation nor community confidence is improved under this framework compared to the current framework. This is particularly due to the increased uncertainty provided by new discretions, the removal of clear assessment stages and initiatives such as tightening timeframes for decision makers while developers can stop the clock at any point of the assessment.

Further, as has been expressed throughout the reform process by many submitters, the subjugation of many important elements of our current planning framework from the primary legislation into subordinate instruments, rules and guidelines, creates confusion and uncertainty due to the relative ease with which our planning framework can be amended. For example, when the *Sustainable Planning Regulations 2009* (Qld) were amended to remove schedules 16 and 17 which provided increased public notification timeframes for high risk developments, this slipped under the radar and was not widely known.

Environmental protection is also not improved, while reports are consistently demonstrating that health of Queensland's ecosystems is degrading. The most recent State of the Environment Report in 2011 states that: '*[i]ntensification of land use and long-term changes in climate remain the most significant factors causing land degradation in Queensland*',⁴ and the recent Outlook Report on our Great Barrier Reef confirms that the status of our prized Great Barrier Reef, which suffers from the emissions from all of our land uses throughout Reef catchments, is 'poor' and getting worse.⁵ With the degradation of ecosystems comes the rising threat of extinction for many species of birds and other animals, a threat that will be an enormous moral and cost burden to our governance authorities and the community at large.

Accountable, transparent and certain decision making

Bring back certainty in the stages of the development assessment process

The proposed development assessment rules (**DA Rules**) take away the clear and certain stages provided by the 'Integrated Development Assessment System' found currently in the *Sustainable Planning Act 2009* (Qld) (**SPA**), in favour of a floating assessment stage. This degrades certainty for the community and decision makers in our planning and development processes.

This means public notification can occur at any point from 5 days after the development has been applied for up until the decision stage. Public notification can therefore occur prior to the information request stage being completed, meaning the public may not be fully informed with all documents at the time of notification. The floating assessment process does little to assist developers, while reducing certainty and clarity in process for the community.

We recommend that:

- 1. The development assessment process under the new planning framework is amended to provide for fixed stages in the Planning Bill, as is provided for in SPA currently; and**
- 2. Clear guidance must be included in Schedule 3 of the rules as to when a decision maker must require re-notification.** 'Schedule 1 – Substantially different development' leaves too much discretion to the decision maker and is not sufficient to provide guidance as to when re-notification must take place.

³ See EDO Qld's submission to the Parliamentary Committee on the proposed Government and Private Member Planning Bills here:

<https://www.parliament.qld.gov.au/documents/committees/IPNRC/2015/PB2015/submissions/111.pdf>

⁴ Queensland Government, '*State of the Environment Report*' (2011), available here: <http://www.ehp.qld.gov.au/state-of-the-environment/report-2011/pdf/executive-summary.pdf>

⁵ Great Barrier Reef Marine Park Authority 2014, Great Barrier Reef Outlook Report 2014, available here: <http://www.gbrmpa.gov.au/cdn/2014/GBRMPA-Outlook-Report-2014/>

Hypothetical example of potential impact if not changed: Danny Developer owns a lot on the Noora Beach, which he wants to develop into a medium sized tourist resort as soon as he can. Council are also keen to see the lot developed quickly as they no longer want the site empty. Danny lodges his development application and undertakes public notification 5 days after he receives acknowledgment that his application has been received.

Sally Submitter lives down the road and loves seeing the turtles which use the beach to nest. She sees the public notification advertised while driving past the lot one day. On reviewing the documents she sees that Danny has mentioned possible impacts to turtles and assumes that he has done sufficient studies to conclude that the activity will not be detrimental.

Council decides that Danny hasn't provided sufficient studies into the impacts that his property will have on the sensitive Noora Beach turtle nesting site – they request that he provide these further studies as part of an information request. Danny provides the further studies on impacts to the turtle nesting sites after public notification finishes.

Sally finds out about the further studies and sees that in fact the development will likely have quite significant impacts on the turtle nesting site. Sally asks Council to require re-notification on the basis of the new information provided. The Council decides not to require re-notification as they would like the development to be undertaken as quickly as possible so that they can get through their backlog of applications. Council goes ahead and approves the application.

Sally loses any ability to provide submissions or appeal the development decision.

Timeframes for assessment managers should not be tightened in DA Rules – this will pressure decision makers and lead to poor decisions

We note that the time available to assessment managers and referral agencies to assess and respond to development applications has been tightened under this framework, however the discretion to extend assessment timeframes as necessary has been removed from the assessment manager. We do not support the need for the agreement of the applicant prior to a timeframe being extended by the assessment manager. This is coupled with the power being extended to the applicant to 'stop the clock' at any time in the assessment process to make representations up to a maximum of 6 months, creating an unbalanced relationship of power between the assessor and applicant.

Hypothetical example of potential impact if not changed:

Amanda Assessor is the only assessment manager at Bangowrie Council, a very low resourced local government. Amanda is swamped with applications and is struggling to assess them in time. Danny Developer has an application being assessed by Amanda and Danny is keen to get his application assessed as quickly as possible. Amanda asks Danny to consent to an extension to allow her more time to consider his application; Danny refuses this request. Amanda decides to refuse the application as she has not been able to assess the application fully.

Danny appeals this refusal, which sucks up more of Amanda and the Council's resources.

We recommend that:

- 3. The assessment manager be permitted to extend a timeframe without the agreement of the applicant.**

Community involvement in decision making

Public notification must be improved to encourage community participation

Public notification processes that are adequate in raising the community's attention to proposed development, and provide certain community rights to have input into decision making, are an integral part of the planning framework. We are concerned that this framework does not adequately provide for or improve certainty and adequacy of public notification processes, namely due to the discretions held by the decision maker to:

- decide the means of public notification required for each development proposal (27.1(1)), with a minimum of only providing written notice to adjoining land owners and the assessment manager; and
- allow an applicant to not comply with the particular public notification processes required of them.

What's worse, the above discretions are coupled with a *maximum* requirement as to methods of public notification that can be requested (DA Rules, 27.1(4)) that is currently under SPA the *minimum* standard for informing the community (SPA s297(1)). This does not reflect a policy of attempting to improve public notification and community consultation – which is apparently the Deputy Premier's intention as quoted above.

We recommend that:

- 4. As stated above, the clear and certain stages of IDAS as provided in SPA currently should be provided for in the planning framework, to ensure that all information obtained through the information request stage is provided to the public to inform their submissions.**
- 5. A requirement for public consultation *prior* to the application being lodged would assist in alerting the public's attention to proposed developments and allowing them to make preliminary submissions. This should alleviate concerns that decision makers may have already pre-determined their decision by the time the information request period is finished.**
- 6. The public notification procedures should be set at a minimum requiring the following, to ensure all sectors of the community are able to be alerted to development proposals:⁶**
 - signs on the property that are clearly visible;
 - written notice to the adjoining land owners;
 - newspaper advertisement in a newspaper distributed most commonly in the region of the development proposal;
 - inclusion in an electronic notification service to all community members who have signed up for notifications of development applications applied for in a local government area, or other appropriately widespread electronic medium for notifying development proposals; and
 - written notice to the assessment manager.
- 7. Re-notification should be required in certain clearly prescribed but appropriately flexible circumstances.**

Hypothetical example of potential impact if not changed:

Gillian leads a busy life with a full time job and 3 children, but she believes in the democratic process of engaging in public consultation opportunities for decision making processes to make sure planning

⁶ Further and relevant to the Planning Bill, public notification processes should be required to be complied with; we recommend repeal of section 53(3) of the Planning Bill 2015.

decisions reflect the desires of local residents who have to live with them. Gillian has heard whisperings that a development is proposed to be applied for to the tune of 30 storeys on her suburban street, but she hasn't been able to find any information about this to learn more about what might be proposed.

Gillian has to check her local council's website every day to find out when the application is lodged, and then to check when public notification will commence. There are no required timeframes for steps under the assessment stage to help guide Gillian as to when public notification may commence. Gillian is shocked to discover that there is no requirement for public notification to even be advertised on the website or in her local newspaper where she is used to finding public notification periods advertised. The developer utilizes her power to 'stop the clock' numerous times on the development assessment process prior to public notification, but this is not advertised on the council's website. Gillian is left having to check the council's website every day for 6 months to make sure she doesn't miss the 15 business days public notification opportunity.

Access to information is good, but could be more certain in the Act

We support the inclusion of a detailed list of documents which must be made available to the public to ensure transparency and adequate information is available to the public to understand planning and decision making processes, as has been provided in Schedule 32 of the Planning Regulation.

We recommend:

- 8. That the list of information to be publicly accessible, currently in Schedule 32 of the Planning Regulation, should be provided in the Planning Bill, rather than the Regulation, to ensure it is not open to be amended without proper scrutiny.**

Protecting nature

Transparency and accountability in assessing State interests slightly improved - more work to be done

Under the proposed Planning Regulation, there is a new requirement for referral agencies and assessment managers to assess relevant development types against the SDAP. This is a good improvement to introduce more accountability into the assessment of State interests, however it is still not enough.

Currently this is no requirement under SPA for assessment managers or referral agencies to assess matters of State interest against the State Development Assessment Provisions (**SDAP**). The SDAP provide the criteria for assessing State interest matters.

In mid-2013 the State Assessment and Referral Agency (**SARA**) was introduced. This led to the removal of concurrence agency power for specialist departments – whereby departments, such as the Department of Environment and Heritage Protection (**DEHP**), could dictate conditions or refusal or approval of development applications which affected matters over which they had specialist regulation, such as heritage or coastal protection for DEHP. While these departments can still provide advice to SARA, SARA is not required to comply with advice. With the loss of concurrence power for specialist departments, it became essential that transparent and thorough criteria are provided for decision makers to assess applications affecting matters of State interest against.

We are pleased to see that the SDAP are now required to be utilized in decision making; and further that the Department of Planning has the intention to review the SDAP this year. However, further steps can be taken to ensure specialist knowledge of relevant departments is integrated into planning decision making.

We recommend:

- 9. Agencies such as DEHP and DNRM, should be provided with the power to dictate conditions or application decisions where their specialist areas are applicable to a development application.**

The regulation could easily be amended to provide this power for the following essential matters:

- coastal protection and heritage – DEHP and the Queensland Heritage Council;
- development in sensitive Great Barrier Reef catchments – DEHP/Office of Great Barrier Reef; and
- vegetation management – Department of Natural Resources and Mines.

Hypothetical example of potential impact if not changed:

Danny Developer wants to develop in an area mapped as highly sensitive to the Great Barrier Reef on the Great Barrier Reef Marine Park Authorities 'Blue Maps'. The OGBR and GBRMPA have specialist skills and knowledge which demonstrates that the development will pose a high risk to the Reef if it is allowed to go through as applied for; they provide advice to SARA that the development should be refused. SARA decides that there is a need from a planning perspective for this development and approves it, leading to further impacts to our vulnerable Reef and a failure to meet international expectations and commitments to protect our Reef from further damage.

Public notification periods should be longer for high risk developments

We note that there is a power in the Planning Bill that a regulation can provide for public notification periods (Planning Bill, section 53(4)(b)(ii)). Currently there is nothing provided in the draft Planning Regulation. Prior to 2013 the *Sustainable Planning Regulation 2009* (Qld) (SPR) required certain high risk developments, such as development within 100 metres of critical habitat or applications for large tourist resorts, to undertake public notification for at least 30 business days. Schedules 16 and 17 of the SPR which provided for these further notification periods were quietly repealed by the previous government; demonstrating the importance that provisions such as these must be in primary legislation to ensure proper scrutiny when appealing them.

We recommend:

- 10. The extended public notification requirements for more high risk developments be reintroduced, as was provided by SPA prior to 2012, in schedules 16 and 17 of the *Sustainable Planning Regulation 2009* into the Regulation, or ideally the Planning Act.**

Plan making rules need to provide more prescriptive guidance to ensure consistency in instruments and good decision making across Queensland

The following elements should be required by the Plan Making Rules to ensure consistency in how local governments provide for certain key matters and provide transparency and assist them in meeting their strategic outcomes.

We recommend:

- 11. A requirement be introduced that performance indicators are utilised in local government planning instruments, to assist in achieving, and assessing the achievement of, strategic outcomes through breaking down outcomes into quantitative or qualitative steps.**

An example may be a strategic outcome of the provision of adequate vegetation buffers around all rivers in a region to protect riverine ecosystem health. This could be supported by performance indicators that no development is allowed or approved which removes vegetation within 20 metres of a river bank, and the total 80 % of 20 metres vegetated river banks in the planning scheme area.

12. Core matters should be require to be provided for in local government planning instruments.

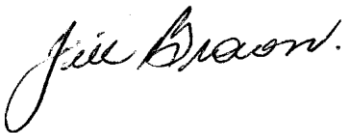
These should include important elements such as those listed as 'valuable features' under the current SPA, section 89(2), including wildlife corridors, buffer zones and areas or places of local cultural heritage significance; and

13. More guidance should be given to local governments as to when development types should trigger impact assessment, and therefore when public notification processes should apply.

For example, development adjacent to heritage listed areas or places, development which is of a certain gross floor area or development within 100 metres of vulnerable or critical habitat areas, should all trigger impact assessment. This decision should not be at the discretion of local governments.

We call on the Queensland Government to amend the proposed instruments, as detailed above. These steps will ensure that Queensland is at least moving towards a planning system appropriate in our modern ecologically and climate aware community.

Yours sincerely,



Jill Brown

President, Birds Queensland

For and on behalf of the members of Birds Queensland