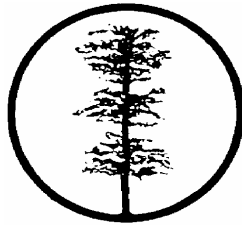


REVIEW OF THE INTEGRATED PLANNING ACT

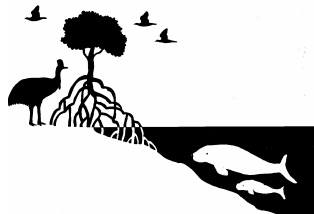
***Making the System Fairer &
Achieving Ecological Sustainability***

Joint Stakeholder Submission of:
the Environmental Defenders Office (Qld) Inc;
the Environmental Defenders Office of Northern Queensland Inc;
and Queensland Conservation

March 2006



Environmental Defenders Office (Qld) Inc



Environmental Defenders Office of Northern Qld Inc



The Review

The Environmental Defenders Offices and Queensland Conservation welcome the initiate to review the Integrated Planning Act, however, are concerned that the review is *process*, rather than *outcome* focused. A proper review of IPA must look at the how the Act is performing terms of environmental *outcomes*. In other words, is the Act achieving its purpose of ecological sustainability, now and for the future?

As the only community environmental organisations included as stakeholders in this review we are simply unable to limit our submission to 2 or 3 key issues as suggested. Such arbitrary limitation will not achieve equity in this review or lead to proper and sustainable outcomes. Each of the recommendations proposed in this submission are necessary to bring back a balance to achieve ecological sustainability. It is not a matter of balancing stakeholder interests - the review must be about achieving ecological sustainability.

Having said that, many of the recommendations in these submissions are supported by the Local Government Association as means of reducing council workloads and enabling proper assessment of development applications. Reducing scrutiny, public involvement and the scope of assessment (eg less impact assessable development) is not the solution to council workloads and would come at the cost of ecological sustainability. We strongly oppose any amendments that would reduce community involvement in the planning and development processes.

We have consulted with the community in preparing our submissions. The refusal to provide government funding to prepare and consolidate the community viewpoint in this review reinforces the general feeling that community must pay from their own pockets in order to be heard in the planning and development process.

The Issues

In earlier correspondence we identified six key issues for the review (see attached handout for the summit “*Making the System Fairer & Achieving Ecological Sustainability*”).

In summary, those issues are:

1. Improving community rights and making the system fairer
2. Restore the Environmental Impact Statement process
3. Planning Schemes are unintelligible, and need prohibit development
4. Are natural resources constraints taken into account in planning?
5. There is a deficit of strong state planning policies/codes that effectively protect Environmental Values
6. Generally, Minister Boyle's ideas for reform of Local Government elections and IPA

In this submission, to reflect the structure of the Integrated Planning Act, we have considered the matters arising from those issues as they apply to the IDAS processes – applications; referrals; notification and decisions; as well as planning generally.

Better applications

Much of the criticisms as to process, e.g. delays; arise from inadequate applications lodged by developers. We reiterate and support those stakeholders, such as the Local Government Association of Queensland, who identify the need for more stringent provisions relating to development applications. Procedurally, better development applications mean better community understanding and easier community access to information. Most importantly, however, better development applications are needed in order to properly assess and consider the environmental impacts of a development.

By requiring up-front information, such as an Environmental Impact Statement when triggered, and a Statement of Environmental Effects in all other cases, developers are required to consider the impacts of the development and the ways of mitigating those impacts before formally applying to the Council. This results in better thought-out development applications; takes the onus off the Council to determine how best to develop the site and reduces the need for amending development applications. An EIS process also ensures the community is aware at the outset of the details of the proposal.

An EIS process is essential for proper decision making regarding higher impact developments. An EIS process will only serve its purpose if the environmental and social triggers for the EIS process are properly codified and the EIS is properly defined – this requires detailed review with community involvement.

The nexus between the developer and consultants is an issue that needs to be considered. One solution would be to mirror the Commonwealth EPBC provisions which require statutory declarations from consultants confirming that the content of an EIS is correct; and making it an offence to supply false or misleading information to obtain an approval. Unlike other professionals, environmental consultants are not accountable to a professional body that requires certain standards of conduct such as those which regulate architects, lawyers and doctors.

The form and content of development applications must not be discretionary. An assessment manager who does not have access to comprehensive information about the development cannot properly assess and determine a development application.

It is unacceptable from the community perspective that often development applications are changed after the notification period has expired. Modifications to development applications should be limited to minor modifications that reduce the impact of the development in response to assessment manager or referral agency responses. All submitters must be advised about any modifications and be given the opportunity to respond.

Recommendations

- 1) Remove discretionary provisions in section 3.2.1 of IPA which provide for the acceptance of applications which are not properly made.
- 2) Include provision that all development applications other than development which trigger the EIS process (see below), must be accompanied by:
 - a. a site plan, sketch of the development; and
 - b. a statement of environmental effects – a statement of environmental effects must indicate the environmental impacts of the development, how the impacts have been identified and the steps taken to protect the environment or to lessen the expected harm on to the environment. (*See clause 50 and schedule 1 of the NSW EP&A regulation*).
- 3) Require that a development application is not valid unless it correctly identifies all relevant concurrence and advice agencies and provides the information required by those agencies.
- 4) Require that where a planning instrument, act or regulation requires that a document be lodged with a development application (e.g. a Greenspace Assessment) that document must be lodged with the development application for the application to be valid.
- 5) Require EIS must be lodged with certain development applications and clearly define what is an EIS.
- 6) Include as triggers to an EIS:
 - a. certain types of development (eg quarries, aquaculture, marinas, canal developments and large sub-divisions)
 - b. certain areas of environmental sensitivity (eg flood prone and hill slopes areas)
 - c. all developments that are likely to significantly affect the environment (including critical habitat) or threatened species, populations or ecological communities or their habitats. When considering this threshold, cumulative impacts must be considered.

(See section 112 of NSW EP&A Act 1979)

- 7) Give assessment managers, concurrence agencies and the Minister for Planning a discretion to call for an EIS where, in their opinion, an EIS is appropriate.
- 8) Require a statutory declaration from consultants confirming the correctness of the information provided. Make it an offence for someone to provide false or misleading information to obtain a development approval.
- 9) Remove all preliminary approval provisions.
- 10) Limit the modifications that can be made to a development application after it has first been lodged to minor modifications that reduce the environmental impact of the development (*section 3.2.9 Changing an application*). Submitters must be notified as to any amendments and given the opportunity to respond (see '*Better community access*' below)

- 11) Bring back the 12 month prohibition on re-lodging development applications substantially the same as refused applications (*Local Government (Planning & Environment) Act*).
- 12) Require Environmental Management Plans (EMPs) with applications for development that require ongoing management. EMP's must be enforceable as conditions of development approval.

Better information and referrals

It is imperative that decision makers are given sufficient information upon which to make a decision. Without that information, a decision should not be made.

Developers are very vocal in their complaints as to delays in the IDAS process, whereas, the current system is heavily weighted towards allowing developers large time frames with limited time for the actual decision making.

We are concerned by the Minister's removal of referral coordination without an alternative system in place, such as an EIS procedure.

Recommendations

- 13) Require developer responses to information requests within 40 business days.
- 14) Remove the discretion to refuse to answer an information request (*section 3.3.8 Applicant responds to any information request – delete subparagraph 3.3.8(1)(c)*)
- 15) Where the information has not fully been provided in response to an information request, the DA should lapse (*section 3.2.12 Applications lapse in certain circumstances*).
- 16) Keep referral coordination provisions until such time as an EIS process has been introduced that will adequately capture those developments that would have required referral coordination.
- 17) All advice agency responses and third party advices must be treated as properly made submissions giving rise to appeal rights (*section 4.1.29 Appeals by advice agency submitters – delete sub-paragraph 4.1.29(1)*)
- 18) Require mandatory pre-design conferencing for larger developments with multiple concurrence agencies.

Better community access and involvement in development process

The community is united in the experience that they are not being heard in the planning and development processes.

Timeframes are simply too tight for the community to respond to development applications in high growth areas. Community groups advise:

- In early January 2006, the Maroochy Shire Council had 2 or 3 advertisements for development applications in the local paper every day for almost 2 weeks, all of which required written submissions in 3 weeks. It would be a full time job for someone to view the development application files and write submissions.
- Often responses from referral agencies and developer responses to information requests are made towards the end of the notification period or even after the notification period expired. This means that the community is both wasting its time addressing issues that would be clarified in responses and it is also denying the community the opportunity to respond to the information later provided by advice agencies or the developer.
- The notification period is often close to expiring by the time community groups find out about the development and are able to access the documents – this leaves very little time for meeting, discussing and preparing informed written submissions.
- Often Councils don't have development application files available at the time someone attends to inspect the documents – it can take up to a week for the council to make a file available.
- Councils don't have designated areas to view files. It is often necessary to view major applications over several days and return several times if additional material is submitted.
- If an application is controversial, too many people want access to the file at the same time.
- Due to the problems associated with viewing files, it is often necessary to purchase a copy of the file – the Sunshine Coast Environmental Council reports two occasions when it was necessary to spend \$500 simply to obtain a copy of a file in order to make a submission.
- Submitters are excluded from negotiations between developers and the Council after the initial decision has been made.

Not only do we need to make the system fairer by providing better timeframes and access to the development application process, but something must be done to show the community that their views are being heard and considered in the actual decision making. The EDO has even been approached by council planning officers who are concerned that the system encourages disregarding community submissions – the perception being that the community concerns are irrelevant and unlikely to be pursued with court action. The Cairns City Council is reported to have advised residents that they will not consider residents' submissions because the developer may take the Council to court and that if the residents don't like it they can take the Council to court.

In order to properly recognise community submissions, assessment authorities should be required to prepare a report detailing how many submissions were made; those in support and those against the key issues; and the reasons for the assessment managers decision in light of the issues raised by submitters.

Recommendations

- 19) Require proper and complete development applications with responses to information requests, and referral agency responses prior to commencing notification (*section 3.4.3 When can notification stage start*).
- 20) Require re-notification of a development application if a response is received from a referral agency or the developer after the commencement of the notification period.
- 21) Require that all submitters be notified about any modifications made to a development application after the notification period has expired, and provide those submitters with time to respond to the modification.
- 22) Assessment Managers to provide identified community groups within their area (such as key resident's associations, regional environmental councils and state groups) with written notice of all impact assessable developments lodged within that area (*section 3.4.4 Public notice of applications to be given – regulations can cover process for listing identified community groups*).
- 23) Assessment Managers to include identified community groups in the consultation as to the terms of reference for an EIS.
- 24) Give submitters the right to extend the time for submissions from 15 to 30 business days – similar to as of right extensions allowed for developers and Councils. (*Insert in section 3.4.5 IPA: any person can extend the time for notification of development applications by 10 business days by contacting the assessment manager and informing them that an extension is required*)
- 25) Give submitters over 30 business days to object to development that triggers the EIS process or involves 2 or more concurrence agencies, together with an option to extend 10 more business days (*section 3.4.5 Notification period for applications*)
- 26) Improve the public scrutiny provisions to ensure that DA and supporting documents are readily assessable without delay:
 - a. Where development applications require public notification, Councils to copy the original file and make available a specific file(s) for public viewing. Where an EIS is required for the development or there are 2 or more concurrence agencies, Councils to have more than one copy available for public inspection.
 - b. Councils to provide a designated office area/space for inspecting council files.
 - c. Development applications and supporting documents are made available online – similar to applications under the EPCB Act (*section 170A EPBC Act*), in CD format for purchase and at Council libraries.

(Section 3.2.8 IPA)

- 27) Require that all submitters are involved in the procedure for negotiated decision notices and are given an opportunity to respond to any proposed changes.
- 28) Require assessment authorities to prepare a report detailing how many submissions were made; numbers in support and numbers against the key issues; and the reasons for the assessment managers decision in light of the issues raised by submitters. Such accountability of decision making is similar to the proposed provision in the IPOLA Bill 2006 which requires assessment managers to give reasons for decisions where the decision conflicts with the planning scheme.
- 29) Provide for public access to the Minister through an advisory committee or planning ombudsman.

Better decision making

This issue is about achieving better outcomes under IPA. The provisions in IPA relating to decision making do not advance the purpose of ecological sustainability.

The community experience is that almost any development application can be approved if enough money is spent on consultants, reports and/or legal proceedings. There is little community faith in the ability of an assessment authority to refuse a development application, even where it is shown that the development will have a detrimental impact on the environment.

IPA allows for flexibility in what development can occur. However, the flexibility allows solely for approvals rather than refusals. Assessment authorities must also have the flexibility to refuse development applications where the environment and ecological sustainability dictates.

The provisions requiring approval/refusal of development applications, contained in section 3.5.13 and 3.5.14, need to make it clear that where an assessment authority is satisfied that a development does not promote ecological sustainability, the assessment authority must refuse the development application.

Amendments to section 3.5.13 and 3.5.14 of IPA cannot simply be rushed through as questions of process. The sections must be the subject of considered review and consultation with major stakeholders including the judges of the Planning & Environment Court.

The matters an assessment authority is required to consider when determining a development application should be expanded to specifically include the natural environment, ecological sustainability and written submissions.

Another aspect of decision making that is not achieving ecological sustainability and is disenfranchising the community is the process to amend conditions of consents. Significant changes are often made to conditions behind closed doors without community involvement or transparency.

Recommendations

- 30) Require that an assessment manager who is satisfied that the activity will detrimentally affect the environment (including critical habitat) or threatened species, populations or ecological communities may only:
 - a. impose conditions or require modifications that will eliminate or substantially reduce the detrimental effect of the activity on the environment;
or
 - b. refuse the development application.

*(amend section 3.5.15 Decision if application requires impact assessment).
(See section 112(4) of NSW Environmental Planning & Assessment Act)*

- 31) Add into the sections on the matters to be considered in code and impact assessment:
- a. the likely impacts of the development, including environmental impacts
 - b. whether the development promotes ecological sustainability;
 - c. the suitability of the site;
 - d. any submissions made;
 - e. the public interest

(Section 3.5.4 Code assessment and section 3.5.5 Impact assessment) (See section 79C and section 111 of the NSW EP&A Act)

- 32) Limit the number of development applications a Council and referral agencies can properly process at capacity at any given time and enable them to defer applications until assessment capacity is available.
- 33) Enable Councils to impose a moratorium on applications; for example where there is a water shortage or other pressing environmental issue.
- 34) Outsourcing should not be allowed. If the outsourcing provisions continue, they must be amended to ensure accountability, obligations, enforcement and community access to the outsourced assessment.
- 35) Require the imposition of certain types of conditions – eg conditions to manage environmental nuisance; environmental impacts and conditions to implement relevant state interests such as SPPs, RP and EPP where those interests are not represented by a concurrence agency.
- 36) Amend section 3.5.44 ‘Requests to change or cancel conditions’ to require:
- i. Conditions can only be changed if the changes are minor and reduce the impact of the development; and
 - ii. Submitters to be notified as to any proposed changes to conditions and be given opportunities to make further submissions regarding those changes.

Better Planning for better environmental outcomes

The purpose of all planning must be to achieve ecological sustainability. Uncertainty in council planning schemes and lack of strong and effective state and regional planning is causing widespread poor environmental outcomes.

We need to look into the future and implement a coordinated and strategic approach to the big picture issues such as biodiversity, climate change and water. How will IPA and local planning schemes take into account the impacts of climate change – such as increased extreme weather, temperature, sea level rises and rainfall changes?

The SEQ Regional plan is a prime example of the lack of coordinated long term planning to achieve ecological sustainability – if we do not have enough water now, how will we have enough water for one million more people? What about the effects of climate change on our water supply? How will increased emissions, the development of further infrastructure and the clearing of vegetation required to accommodate one million more people effect greenhouse gas emissions?

The recommendations below include support for the EPA’s submission on codifying their state interests to include biodiversity; wetlands and water quality. This must be done immediately given the rate of development and slow preparation of SPPs. We also reiterate the Local Government Association of Queensland’s submissions as to the need for stronger, more clearly defined state planning policies.

In addition to these big picture issues, there are some process planning issues that circumvent sustainability. The need for all planning instruments to have the ability to prohibit development is an important issue for the community and is widely and strongly supported by stakeholders and the LGAQ. Also, Queensland must catch up with the rest of the world and finally remove the compensation/injurious affection provisions from IPA.

Recommendations

- 37) Allow prohibition of development in all planning instruments or documents with the effect of planning interests.
- 38) Limit code assessment to minor developments. Ensure that all developments likely to detrimentally impact on the environment are impact assessable.
- 39) The definition of ecological sustainability is hard to understand and unhelpfully refers to balance of social, economic and ecological interests rather than including an ecological bottom line.
- 40) Codification of Environmental Protection Agency state interests. The codification of EPA state interests must include biodiversity; wetlands and water quality and must be far broader than current advice or concurrence powers. IPA should include a requirement to incorporate Environmental Planning Policies under the EP Act and

relevant parts of recovery and conservations plans made under the Nature Conservation Act 1992 into local planning schemes.

- 41) Far broader circumstances giving rise to EPA concurrence powers.
- 42) More and stronger State Planning Policies – including policies on climate change that contribute to a reduction in greenhouse gas omissions; sustainable energy; sustainable water supplies; nature conservation and biodiversity. For example, in NSW policies such as BASIX encourage environmentally friendly housing that contributes to reduced greenhouse gas omissions.
- 43) State Planning Policies must not be used to circumvent environmental protection in IPA and planning schemes – for example the proposed state planning policy on housing identifies environmental factors as a barrier to affordable housing.
- 44) A mechanism to resolve conflicting State interests at a State level.
- 45) Integrated regional plans based on sustainability indicators and achievement of sustainability outcomes.
- 46) Require Strategic Planning with supporting documents to be mandatory components of planning schemes. The present Statement of Proposals stage in plan preparation could be modified to include a draft strategic plan.
- 47) Natural resources constraints must be addressed in plans.
- 48) Require that background studies and information for the basis of plans be made available.
- 49) Require that when a council prepares a new plan, council to notify the community as to any rezoning and the impacts of the rezoning.
- 50) Provide for better community consultation in the preparation of new plans with increased transparency – eg reports on the number of submissions made about a proposed planning scheme and the reasons for not responding to the submissions.
- 51) Desired Environmental Outcomes need to be clearer. Where DEOs conflict, the scheme should identify which outcomes are paramount.
- 52) Formulate model provisions with model definitions for all planning schemes. Remove discretionary language.
- 53) Amend the SEQ regional plan to reduce population growth in response to the wide community dissatisfaction with the plan.
- 54) Remove compensation/injurious affection from IPA (*Chapter 5, Part 4 IPA*)
- 55) Set a cut-off date for old approvals – timeframes for substantial completion as well as substantial commencement. Old approvals are particularly an issue where the zoning and intent of an area has changed since the approval was given. Out of date approvals that are no longer consistent with the current planning scheme must expire.
- 56) Where any application seeks a currency period in excess of the standard 2 and 4 years and which involves subsequent applications, require that the subsequent applications be subject to the planning scheme at the time the subsequent applications are being assessed.

- 57) Protect all remnant vegetation and critical habitat on freehold land in urban areas, not just vegetation classified as endangered under VMA (see submission of WPSQ and the Wide Bay Burnett Conservation Council. (*schedule 8 IPA*))

Better Enforcement and Access to Justice

Enforcement and access to justice issues are of great concern to the community. The feedback from the community is that due to inaction by councils, the onus is on them to enforce conditions and planning schemes and to challenge inappropriate development.

Whilst IPA recognises the importance of community involvement through public standing provisions, in practice, this right is derogated by invisible barriers, such as costs in terms of time and money, exposure to costs risks and the lack of access to legal aid.

It must not be left to unpaid members of the public to take action to enforce IPA and planning schemes and seek to achieve ecological sustainability. Unlike developers in legal proceedings, the community doesn't have any direct financial benefit from their involvement. Even if the community does succeed in any court action, it may be left battling new applications over the same site.

We support the proposals of the Local Government Association to give greater powers to councils to take enforcement action. In addition, councils should be made accountable for decisions not to take action to remedy or restrain a breach and should also be accountable for decisions amending conditions to legitimise breaches already made.

There should be a procedure for the community to call on the DLGPSR to take action where councils refuse to enforce conditions or take action against breaches of IPA.

We support the general intent of IPA that each party pay their own costs in Planning & Environment Court proceedings. However, recently there have been a number of costs orders made against bona fide community groups. IPA should state clearly that costs orders cannot be made against bona fide community litigants who do not have a financial interest in proceedings.

Where a community member with no pecuniary interest in proceedings is successful in establishing that there has been a breach of IPA, they should be entitled to their costs of the proceedings.

There is wide community support for an expertise based non-legalistic Planning Tribunal without lawyers for most dispute resolution; with legal issues being referred to the Planning & Environment Court. We agree that this issue should be explored in greater detail.

Recommendations

- 58) IPA should state clearly that costs orders cannot be made against bona fide community litigants who do not have a financial interest in proceedings.

- 59) Where they have no personal pecuniary interest in the proceedings, community litigants who are successful in establishing a breach of IPA are entitled costs.
- 60) Legal Aid must be made available for public interest environmental matters.
- 61) Introduce more readily accessible enforcement mechanisms to encourage Councils to enforce their own conditions and make councils accountable for inaction.
- 62) Explore the introduction of an expertise-based, non-legalistic Planning Tribunal.

Written by Anita O'Hart and Jo Bragg with input from Kirsty Ruddock (EDO Northern Qld); Toby Hutcheon (QC) and representatives from regional and local environmental groups and community organisations.

**Joint Submission of the Environmental Defenders Office (Qld) Inc and the
Environmental Defenders Office of Northern Queensland Inc and Queensland
Conservation**

SUMMARY OF RECOMMENDATIONS

- 1) Remove discretionary provisions in section 3.2.1 of IPA which provide for the acceptance of applications which are not properly made.
- 2) Include provision that all development applications other than development which trigger the EIS process (see below), must be accompanied by:
 - a. a site plan, sketch of the development; and
 - b. a statement of environmental effects – a statement of environmental effects must indicate the environmental impacts of the development, how the impacts have been identified and the steps taken to protect the environment or to lessen the expected harm on to the environment. (*See clause 50 and schedule 1 of the NSW EP&A regulation*).
- 3) Require that a development application is not valid unless it correctly identifies all relevant concurrence and advice agencies and provides the information required by those agencies.
- 4) Require that where a planning instrument, act or regulation requires that a document be lodged with a development application (e.g. a Greenspace Assessment) that document must be lodged with the development application for the application to be valid.
- 5) Require EIS must be lodged with certain development applications and clearly define what is an EIS.
- 6) Include as triggers to an EIS:
 - a. certain types of development (eg quarries, aquaculture, marinas, canal developments, and large sub-divisions)
 - b. certain areas of environmental sensitivity (eg flood prone and hill slopes areas)
 - c. all developments that are likely to significantly affect the environment (including critical habitat) or threatened species, populations or ecological communities or their habitats. When considering this threshold, cumulative impacts must be considered.

(See section 112 of NSW EP&A Act 1979)
- 7) Give assessment managers, concurrence agencies and the Minister for Planning a discretion to call for an EIS where, in their opinion, an EIS is appropriate.
- 8) Require a statutory declaration from consultants confirming the correctness of the information provided. Make it an offence for someone to provide false or misleading information to obtain a development approval.
- 9) Remove all preliminary approval provisions.

- 10) Limit the modifications that can be made to a development application after it has first been lodged to minor modifications that reduce the environmental impact of the development (*section 3.2.9 Changing an application*). Submitters must be notified as to any amendments and given the opportunity to respond (see '*Better community access*' below)
- 11) Bring back the 12 month prohibition on re-lodging development applications substantially the same as refused applications (*Local Government (Planning & Environment) Act*).
- 12) Require Environmental Management Plans (EMPs) with applications for development that require ongoing management. EMP's must be enforceable as conditions of development approval.
- 13) Require developer responses to information requests within 40 business days.
- 14) Remove the discretion to refuse to answer an information request (*section 3.3.8 Applicant responds to any information request – delete subparagraph 3.3.8(1)(c)*)
- 15) Where the information has not fully been provided in response to an information request, the DA should lapse (*section 3.2.12 Applications lapse in certain circumstances*).
- 16) Keep referral coordination provisions until such time as an EIS process has been introduced that will adequately capture those developments that would have required referral coordination.
- 17) All advice agency responses and third party advices must be treated as properly made submissions giving rise to appeal rights (*section 4.1.29 Appeals by advice agency submitters – delete sub-paragraph 4.1.29(1)*)
- 18) Require mandatory pre-design conferencing for larger developments with multiple concurrence agencies.
- 19) Require proper and complete development applications with responses to information requests, and referral agency responses prior to commencing notification (*section 3.4.3 When can notification stage start*).
- 20) Require re-notification of a development application if a response is received from a referral agency or the developer after the commencement of the notification period.
- 21) Require that all submitters be notified about any modifications made to a development application after the notification period has expired, and provide those submitters with time to respond to the modification.
- 22) Assessment Managers to provide identified community groups within their area (such as key resident's associations, regional environmental councils and state groups) with written notice of all impact assessable developments lodged within that area (*section 3.4.4 Public notice of applications to be given – regulations can cover process for listing identified community groups*).
- 23) Assessment Managers to include identified community groups in the consultation as to the terms of reference for an EIS,
- 24) Give submitters the right to extend the time for submissions from 15 to 30 business days – similar to as of right extensions allowed for developers and Councils. (*Insert*

in section 3.4.5 IPA: any person can extend the time for notification of development applications by 10 business days by contacting the assessment manager and informing them that an extension is required)

- 25) Give submitters over 30 business days to object to development that triggers the EIS process or involves 2 or more concurrence agencies, together with an option to extend 10 more business days (*section 3.4.5 Notification period for applications*)
- 26) Improve the public scrutiny provisions to ensure that DA and supporting documents are readily assessable without delay:
 - a. Where development applications require public notification, Councils to copy the original file and make available a specific file(s) for public viewing. Where an EIS is required for the development or there are 2 or more concurrence agencies, Councils to have more than one copy available for public inspection.
 - b. Councils to provide a designated office area/space for inspecting council files.
 - c. Development applications, supporting documents and all relevant documents such as information requests, are made available online – similar to applications under the EPCB Act (*section 170A EPBC Act*), in CD format for purchase and at Council libraries.

(Section 3.2.8 IPA)

- 27) Require that all submitters are involved in the procedure for negotiated decision notices and are given an opportunity to respond to any proposed changes.
- 28) Require assessment authorities to prepare a report detailing how many submissions were made; numbers in support and numbers against the key issues; and the reasons for the assessment managers decision in light of the issues raised by submitters. Such accountability of decision making is similar to the proposed provision in the IPOLA Bill 2006 which requires assessment managers to give reasons for decisions where the decision conflicts with the planning scheme.
- 29) Provide for public access to the Minister through an advisory committee or planning ombudsman.
- 30) Require that an assessment manager who is satisfied that the activity will detrimentally affect the environment (including critical habitat) or threatened species, populations or ecological communities may only:
 - a. impose conditions or require modifications that will eliminate or substantially reduce the detrimental effect of the activity on the environment; or
 - b. refuse the development application.

(amend section 3.5.15 Decision if application requires impact assessment).

(See section 112(4) of NSW Environmental Planning & Assessment Act)

- 31) Add into the sections on the matters to be considered in code and impact assessment:
 - a. the likely impacts of the development, including environmental impacts

- b. whether the development promotes ecological sustainability;
 - c. the suitability of the site;
 - d. any submissions made;
 - e. the public interest
- (Section 3.5.4 Code assessment and section 3.5.5 Impact assessment) (See section 79C and section 111 of the NSW EP&A Act)*
- 32) Limit the number of development applications a Council and referral agencies can properly process at capacity at any given time and enable them to defer applications until assessment capacity is available.
 - 33) Enable Councils to impose a moratorium on applications; for example where there is a water shortage or other pressing environmental issue.
 - 34) Outsourcing should not be allowed. If the outsourcing provisions continue, they must be amended to ensure accountability, obligations, enforcement and community access to the outsourced assessment.
 - 35) Require the imposition of certain types of conditions – eg conditions to manage environmental nuisance; environmental impacts and conditions to implement relevant state interests such as SPPs, RP and EPP where those interests are not represented by a concurrence agency.
 - 36) Amend section 3.5.44 ‘Requests to change or cancel conditions’ to require:
 1. Conditions can only be changed if the changes are minor and reduce the impact of the development; and
 2. Submitters to be notified as to any proposed changes to conditions and be given opportunities to make further submissions regarding those changes.
 - 37) Allow prohibition of development in all planning instruments or documents with the effect of planning interests.
 - 38) Limit code assessment to minor developments. Ensure that all developments likely to detrimentally impact on the environment are impact assessable.
 - 39) The definition of ecological sustainability is hard to understand and unhelpfully refers to balance of social, economic and ecological interests rather than including an ecological bottom line.
 - 40) Codification of Environmental Protection Agency state interests. The codification of EPA state interests must include biodiversity; wetlands and water quality and must be far broader than current advice or concurrence powers. IPA should include a requirement to incorporate Environmental Planning Policies under the EP Act and relevant parts of recovery and conservations plans made under the Nature Conservation Act 1992 into local planning schemes.
 - 41) Far broader circumstances giving rise to EPA concurrence powers.
 - 42) More and stronger State Planning Policies – including policies on climate change that contribute to a reduction in greenhouse gas omissions; sustainable energy; sustainable water supplies; nature conservation and biodiversity. For example, in

NSW policies such as BASIX encourage environmentally friendly housing that contributes to reduced greenhouse gas emissions.

- 43) State Planning Policies must not be used to circumvent environmental protection in IPA and planning schemes – for example the proposed state planning policy on housing identifies environmental factors as a barrier to affordable housing.
- 44) A mechanism to resolve conflicting State interests at a State level.
- 45) Integrated regional plans based on sustainability indicators and achievement of sustainability outcomes.
- 46) Require Strategic Planning with supporting documents to be mandatory components of planning schemes. The present Statement of Proposals stage in plan preparation could be modified to include a draft strategic plan.
- 47) Natural resources constraints must be addressed in plans.
- 48) Require that background studies and information for the basis of plans be made available.
- 49) Require that when a council prepares a new plan, council to notify the community as to any rezoning and the impacts of the rezoning.
- 50) Provide for better community consultation in the preparation of new plans with increased transparency – eg reports on the number of submissions made about a proposed planning scheme and the reasons for not responding to the submissions.
- 51) Desired Environmental Outcomes need to be clearer. Where DEOs conflict, the scheme should identify which outcomes are paramount.
- 52) Formulate model provisions with model definitions for all planning schemes. Remove discretionary language.
- 53) Amend the SEQ regional plan to reduce population growth in response to the wide community dissatisfaction with the plan.
- 54) Remove compensation/injurious affection from IPA (*Chapter 5, Part 4 IPA*)
- 55) Set a cut-off date for old approvals – timeframes for substantial completion as well as substantial commencement. Old approvals are particularly an issue where the zoning and intend of an area has changed since the approval was given. Out of date approvals that are no longer consistent with the current planning scheme must expire.
- 56) Where any application seeks a currency period in excess of the standard 2 and 4 years and which involves subsequent applications, require that the subsequent applications be subject to the planning scheme at the time the subsequent applications are being assessed.
- 57) Protect all remnant vegetation and critical habitat on freehold land in urban areas, not just vegetation classified as endangered under VMA (see submission of WPSQ and the Wide Bay Burnett Conservation Council. (*schedule 8 IPA*))
- 58) IPA should state clearly that costs orders cannot be made against bona fide community litigants who do not have a financial interest in proceedings.

- 59) Where they have no personal pecuniary interest in the proceedings, community litigants who are successful in establishing a breach of IPA are entitled costs.
- 60) Legal Aid must be made available for public interest environmental matters.
- 61) Introduce more readily accessible enforcement mechanisms to encourage Councils to enforce their own conditions and make councils accountable for inaction.
- 62) Explore the introduction of an expertise-based, non-legalistic Planning Tribunal.