"BETTER PLANNING FOR QUEENSLAND"
Draft Submission from Kurilpa Futures Campaign Group on proposed new Queensland Planning Legislation

1. INTRODUCTION.

The introduction of new *Better Planning* and *Planning & Environmental Court Acts* provides a timely opportunity to ensure Queensland's planning legislation is directed towards the development of integrated, sustainable and inclusive communities in healthy environments. The final version of the new acts should reflect the "Better Planning" intentions of the title by promoting the sustainable development of whole communities, the well being of their residents, health of their environments and vitality of their economies. The emphasis of the earlier Discussion Paper on community consultation is welcomed but needs to be better reflected in the proposed new Act.

2. STYLE & PRESENTATION

What is now required is an act that will tell all parties- community members, planning staff, developers and decision makers – four things:

I. what they need to know about *who* must be involved in the preparation, review and administration of plans;
II. *how* each can contribute;
III. *what form* plans should take; and
IV. *what processes* of review and redress will be guaranteed.

Specific ***State Planning Policies*** need to be reinstated to replace the current monolithic single State Planning Policy with its 5 parts, 16 aspects and 89 pages, which is over-centralised and economically biased. This reform would encourage much needed interdepartmental liaison and encourage community collaboration, not least with interest groups and peak bodies representing social, environmental, economic, health, recreational and cultural concerns.

Local government
Urban district and local plans should be consistent not only with one another and with the State Planning Policies and Regional Plans; they should also be linked to well articulated statements of local councils' own overall future intentions and priorities and the outcomes of community consultation.

Community Plans.
Good examples of the virtues of such plans are the succinct Community Plans produced in accord with 2009 Local Government Act by many councils, including the Sunshine Coast and Moreton Bay Regions and the Redland Bay and Toowoomba Cities, but not Brisbane City, in the period 2009-13. They outline the processes and outcomes of consultation and the integrated priorities and proposals of their Councils in simply expressed, well spaced and generously illustrated pages, seldom exceeding 50 -60 in number. The policy vacuum resulting from withdrawing requirements for such plans can only encourage the alarming tendency of local planning authorities to consign decisions about strategic directions and intensity of development to simply facilitating market forces. This can undermine a key role of democratically elected governments.

In addition, these Community Plans contained arrangements for community consultation far in advance of those in successive Queensland legislative requirements

for physical planning schemes. These could be used as starting points for both councils' internal consultation and for dialogue with their wider communities. Planning instruments are needed that require demonstration of how progress towards shared goals is to be achieved through interdepartmental collaboration in specified collaborative actions, with opportunities for continuing community input.

Local plans, sitting within this context, should also be based on systematic consultation to identify local community objectives and how these are to be integrated with city wide goals, further discussed in the next section on Participation and Process. They should be accompanied by Infrastructure schedules for both social and physical services.

Development Assessment. The process of lodging all assessable development applications should require evidence of prior consultation with neighhbours and local communities. This would have three benefits. First the local people would have the opportunities to voice direct to the developers their interests and genuine concerns, which are highly legitimate matters. Second, the developers would have the opportunity to notify local residents of the results they see accruing to local communities in terms of "trickle down" benefits and increased range of provisions and facilities. Third, the developers would benefit by having the opportunities to visualize and possibly amend their proposed schemes from the standpoint of the existing communities with whom they would be negotiating. This would have the added advantage of helping to forestall avoidable errors of ignorance and insensitivity which can do much to alienate communities and result in unnecessary environmental damage.

Attempts to address this problem outlined in the Exposure Draft of the proposed Planning Act do not achieve these aims. New "Accepted", "Assessable" & "Prohibited" categories merely replace old "Code and Impact Assessable" ones, while the new sub-category of "standard/code assessable" of Section 43 (or "Bounded Assessable" of the Snapshot paper) effectively replace the current "Code Assessable" one in removing from neighbors and interested community members the rights to be informed about, or object to, proposed new developments.

The "Snapshot" of September, 2015 also states that in the cases of Standard/code assessment:
" The assessor *must* approve the development application to the extent it complies with assessment benchmarks *or if compliance can be achieved by imposing development conditions*" (Page 9, "Proposed Categories of Development" table). Development Assessment Officers are thus put in the position of having to try to re-shape proposals to assist them to succeed. Little has changed from the current widely criticised approach except that the most dubious forms of current practice have now been written into the wording of the proposed Act. The marker would be moved further towards drawing planners and developers into collusion and away from safeguarding long-term community and environmental interests.

Participation in planning should include, but by no means be limited to, the basic rights of affected third parties to be notified and respond to significant new planning proposals. Exemptions from such community review should apply only to those developments, which are primarily self affecting , which should be limited to extensions behind current building lines, not exceeding existing height and bulk limits and involving small increases in existing building volume – often defined as being no more than 10%. Otherwise they will affect the public domain and should therefore, on both logical and ethical grounds, be subject to public scrutiny and comment. However, Section 51 of the Exposure Draft provides exemption of notification and objection rights even from "merit/ impact assessable" cases, stating:

"The assessment manager may assess and decide a development application even if some of the requirements of the development assessment rules about the notice have not been complied with, if the assessment manager considers any non-compliance has not—
(a) adversely affected the public's awareness of the existence and nature of the application; or
(b) restricted the public's opportunity to make properly made submissions."

It goes without saying that these are subjective decisions. It is difficult to see how failure to notify neighbours and third parties about proposed developments can fail to adversely affect the public's awareness of the existence and nature of the application. This sub clause should be deleted.

3. PARTICIPATION & PLAN PREPARATION PROCESS

Interests of both inclusive and deliberative decision taking, and responsive plan preparation should also require that all current residents and users be notified of the intention to prepare a new plan, and be invited to participate in one or more community workshops or forums. Staffed by relevant professional personnel, these workshops should respond to community questions, elicit local concerns and aspirations, and identify and record major objectives and priorities.

This more interactive and deliberative approach to plan making will require some flexible reorganisation of roles and locations. Long standing aims to locate "planners in the suburbs" by moving information points closer to action points of large urban areas can be achieved by requirements for shop front methods of preparation, including capacity for local groups and individuals to have meetings by appointment with planning staff during plan preparation periods. Setting of plan objectives should include opportunities for open and recorded discussions of community concerns, with subsequent explanation of how and how far adopted plans take account of the objectives and priorities which emerge.

Care should be taken to achieve contact with all age and social groups. Communicating with children and young people in particular requires both different and similar approaches to engagement with adults. As Mary Kellett, now Professor of Childhood and Youth, Centre for Childhood Development and Learning, at the Open University, in the UK observes "Without effective engagement with children and young people, we cannot access their perspectives, understand their concerns, provide adequately for their needs, or convey our regard for them."
(http://epubs.scu.edu.au/cgi/viewcontent.cgi?article=1029&context=ccyp_pubs)

Use should be also be made of dedicated pages on councils' websites to keep interested parties informed of the process of this community dialogue, and to allow them to add their own contributions in the course of the plan's development.

Processes
Appropriate forms of consultation and participation need to be integrated at each level of governance. At *state level* consideration needs to be given to a State Planning Advisory Committee (SPAC) with membership drawn from peak, professional and academic bodies in the social, environmental and economic fields. *Local* governments' strategic community plans, should both draw together their own different departmental staff and also establish consultative community bodies with rights of access to dialogue, commentary and response. District plans with 15-year time horizons need to be brought

into alignment with this city wide community plans and extend their consultative methods to a finer grain of local participation. Where short or medium term development is envisaged, local plans need to be prepared with direct involvement with local communities by means of Community Forums or Panels established to hold open and publicised meetings on the objectives and priorities to be pursued by the proposed plan, acknowledging both city wide and local interests, with rights of access to information, dialogue, review and response.

In these ways planning can be improved as a place-making and community- building activity, with broad brush and participatory community plans linked with more specific spatial district planning schemes in expressing overall intentions in the form of general land use designations and in turn guiding specific local plans containing detailed zoning information as well as indicating sites for future social and physical infrastructure and facilities.

4. APPEAL SYSTEMS.

The Planning & Environment Court. As the main review process, the Planning & Environment Court needs radical review- it is expensive, intimidating, adversarial and lacks planning or environmental expertise or adequate professional resourcing. However, it is disappointing that the new Planning and Development (Planning Court) Bill 2015 fails to take advantage of this overdue opportunity to reform, democratise and de-monetise the state's appellate system.

Currently appellants may be liable to life crippling litigation costs, providing a good example of the failings of the system. The new Bill merely proposes to reduce liability by limiting it to cases where judges use their discretion to award costs because they consider objections vexatious or unjustified. Unless this threat is removed entirely, it is certain to continue to deter well-justified community objections from challenging wealthy developer applicants.

Available alternative models. This fundamental failing is only one part of a system that needs far more radical review, to replace adversarial, lucrative and legalistic processes by more responsive, cost free, negotiative and inquiring methods of conflict resolution. Models can be drawn from elsewhere in Australia (Victoria and South Australia) and overseas in the UK , where there are professionally qualified and independent Planning Inspectors and in Oregon (USA) where the Land Use Board of Appeals [LUBA] consists of a three-member Board serving four-year terms. Appointees, who must be members of the Oregon State Bar, are confirmed by the Oregon Senate. Both Oregon's Board members and UK's Inspectors work on a problem solving and freely available basis, and resolve disputes within short time frames.

Introduction of this kind of system would underpin far more opportunities for community participation than are currently envisaged in the conservative proposals of the current Planning Court Bill. In particular, new proposals need testing and strengthening from consultation with peak organisations with experience in environmental, community and business expertise and advocacy.