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QELA, a not for profit organisation, consults with and educates interested professionals and government representatives about planning, development and environmental laws which apply, or are proposed to apply in Queensland. QELA provides a collegiate forum for multi-disciplinary interaction and collaboration.

1 July 2015

The Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
BRISBANE QLD 4000

Email: ipnrc@parliament.qld.gov.au

Dear Director,

Submission about the Sustainable Ports Development Bill 2015 (Qld)

Thank you for inviting the Queensland and Environmental Law Association (QELA) to make a submission about the *Sustainable Ports Development Bill 2015 (Qld) (SPD Bill)* to the Infrastructure, Planning and Natural Resources Committee.

QELA is a non-profit, multi-disciplinary association. Its members include lawyers, town planners, and a broad range of consultants who represent and advise a miscellany of participants in the development industry.

QELA is aware that other stakeholders may have strong views about the policy objectives sought to be implemented by the SPD Bill. QELA's membership is diverse, this submission does not address the desirability of the policy objectives underpinning the SPD Bill such as the balance between economic and environmental drivers.

With respect to the SPD Bill's operative provisions, QELA provides the following comments for the committee's consideration:

- (a) **Section 11** – In relation to notification of a proposed master plan for a priority port or a proposed amendment to a master plan for a priority port, given the likely amount and range of interest, QELA considers it important for a copy of the public notice and the draft instrument to also be published on the department's website for the duration of the consultation period. QELA recommends, if thought appropriate, that an additional sub-section be inserted in section 11 in this regard.

- (b) **Section 19** – To provide certainty to those affected by a priority port master plan, a statutory timeframe or, alternatively a “no later than” period, should be provided with respect to the Minister making a port overlay for the priority port’s master planned area once the master plan takes effect.
- (c) **Sections 24 and 25** - Whilst upon proper consideration of these sections, they do not appear to affect the application of section 287 of the *Transport Infrastructure Act 1994* (Qld) (**TIA**), it may be appropriate to clarify these sections on their face to avoid any doubt about whether the new provisions affect the exemption in section 287(1) of the TIA.
- (d) **Section 28** - The *Sustainable Planning Act 2009* (Qld) (**SPA**) is the primary regulatory instrument for planning and development in Queensland and the first point of reference in development assessment. Proposed sections 28(5) and (6) of the SPD Bill relate to an assessment manager’s decision about a development application under the SPA and as such, QELA considers it appropriate for the contents of this section to be replicated, or alternatively, cross-referenced, by way of amendment to the SPA.
- (e) **Section 33(b)** – This proposed section contemplates that approvals may be granted for the purposes of “establishing, constructing or improving a port facility” in a priority port’s master planned area. It is noted that there are no definitions of “establishing”, “constructing” or “improving” in the SPD Bill. There is a definition of “enlarging” in the SPD Bill that “includes increasing the depth of” although the word “enlarging” itself does not appear in section 33.

It is also noted that the Explanatory Notes for the SPD Bill state that:

“Together, clauses 32 and 33 implement the government’s commitment in the LTSP to restrict capital dredging for the development of new or expansion of existing port facilities to within the regulated port limits of the priority ports.”

QELA welcomes further clarity in the SPD Bill with respect to the purpose of “improving” a port facility, including whether it includes enlarging or expanding a port facility (outside of the existing port limits for a port) when that enlarging or expanding occurs within a priority port’s master planned area.



- (f) **Section 34** – Proposed section 34 of the SPD Bill allows an approving authority to grant an approval for the disposal of prescribed dredge material within a restricted area in specified circumstances. The SPD Bill does not contain any provisions in relation to how such an approval may be obtained, including whether it requires an application to be made, how any application would be made and processed or the decision making timeframe and criteria.
- (g) **Sections 38-39** – These proposed sections address how the port overlay will impact existing development approvals and existing development applications. As presently drafted there is uncertainty in the SPD Bill in relation to the impact of the port overlay in circumstances where:
- a. An appeal has been filed in the Court in relation to a development application (before commencement of the SPD Bill) but is undecided at the time of commencement of the SPD Bill.
 - b. An application to amend an existing development approval is made before commencement of the SPD Bill but undecided at the time of commencement of the SPD Bill.
 - c. An application is made to change an existing development approval after commencement of the SPD Bill.
- (h) **Section 44** – This proposed section places a three year limit within which to claim compensation arising as a consequence of the port overlay coming into effect. It is noted that one of the pre-requisites to accruing a right to compensation in section 42 of the SPD Bill is the making of a development application for the alternative lawful use and for that development application to be decided.

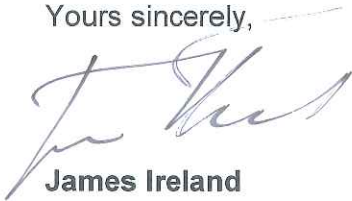
QELA anticipates that a three year window is likely to be sufficient (even in circumstances of an impact assessable development application), however it is noted that the three year window commences the day after the port overlay has effect, not from when the development application was made or decided. If it is the intention to limit the timeframe within which compensation is payable as a consequence of the port overlay, then section 44 appears to achieve its purpose. The effects of this however will have practical implications for land owners and planning consultants in that they will need to be vigilant in considering the implications of a port overlay immediately after the port overlay takes effect and be swift in preparing and lodging development applications accordingly. Consideration might be given to extending an entitlement to claim compensation to within 6 months after the development application is

deemed to have been decided. This would be consistent with the compensation provisions in the *Sustainable Planning Act 2009*.

- (a) **Section 46** – This proposed section requires the Minister to decide a compensation claim within 60 business days after the day the claim is made. The SPD Bill contains no consequence if a decision is not made within this time. For certainty, QELA recommends that consideration be given to the insertion of a definition of “deemed refusal”, like that which appears in the Schedule 3 of the SPA, in relation to a claim for compensation under section 46 of the SPD Bill.
- (b) **Section 51** – Having regard to the recommendation identified above with respect to inserting a definition of “deemed refusal” in the SPD Bill, if this recommendation is considered appropriate, section 51 should be amended accordingly to also allow a person who is dissatisfied with a deemed refusal of a compensation claim to appeal to the court.

We thank you for the opportunity to make a submission about the SPD Bill. Representatives of QELA would welcome the opportunity to discuss this submission in further detail, if required.

Yours sincerely,



James Ireland

President
Queensland Environmental Law Association

