



14 December 2015

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

[ipnrc@parliament.qld.gov.au](mailto:ipnrc@parliament.qld.gov.au)

Dear Sir/Madam

**Submission regarding the Planning Bill 2015 (Bill) and Planning Regulation 2016 (Regulation)**

We refer to the release of the Bill and Regulation for consultation on 23 November 2015. In particular, we refer to Chapter 7 Part 4, Urban Encroachment, of the Bill and are pleased to be able to make the following submissions.

**Background**

Lion-Beer Spirits & Wine Pty Ltd (**Lion**) has a strong connection to Queensland through our iconic XXXX Castlemaine Perkins Brewery and milk, cheese and juice operations in Crestmead, Malanda and Lytton. Our company employs over 650 people in the State and is an integral component of the State's agricultural, retail, hospitality and tourism industries – making an estimated \$311 million contribution to the local economy every year.<sup>1</sup>

Our origins in Queensland date back to 1878, when the Perkins brothers began brewing in Milton. These days, we brew approximately 200 million litres of beer annually. The Milton brewery is an iconic part of the Brisbane landscape and a tourist attraction in its own right.

Over the years, Lion has invested heavily in new technologies at the Milton brewery site, which have delivered operational and environmental performance benefits. With urban development pressures in Brisbane and Government support for transit oriented development, Lion has spent considerable time and effort over the years to protect capital invested in the brewery and the existing use rights it enjoys. Further, given the iconic nature of the brewery, Lion sought to avoid the issues that other iconic lawful uses (such as Luna Park in Sydney) have experienced from encroaching development.

The urban encroachment provisions originally contained in the lapsed *Planning (Urban Encroachment- Milton Brewery) Act 2009* (Qld), and now in the *Sustainable Planning Act 2009* (Qld) (**SP Act**), have allowed Lion to invest with confidence in its long term brewery operations.

Further, the certainty provided by the urban encroachment regime has meant that Lion has avoided the need to engage in ongoing and costly litigation to protect its existing use rights and interests from urban development projects, including complaints from residents moving in to new development projects.

Lion strongly supports the continued operations of the urban encroachment regime in the new Bill and Regulation.

---

<sup>1</sup> Deloitte Access Economics Report FY14.



## The Bill

The table below outlines some submissions on drafting issues with the Bill in its current form.

Bill Section	Comments
s274(2) – Restriction on legal proceedings	<p>These sections have largely the same effect as the SP Act, however there appear to be two drafting issues that we submit should be addressed in the Bill.</p>
s319 – Milton XXXX Brewery	<p>(a) Section 319(4) of the Bill states:</p> <p>“(4) Section 274(2) applies to a claim relating to an emission of light only if the intensity of the light is more than the intensity of light emitted before 27 April 2009.”</p> <p>In relation to the Milton Brewery, this could be read to restrict the application of section 274(2) solely to claims relating to the emission of light, rather than the broader definition of “an activity that involves emissions” under section 267(1)(a). Section 319(4) should be amended to clarify that it applies to the extent the emission relates to light and does not otherwise limit the operation of section 274(2).</p> <p>(b) Further, with respect to light emissions, if the Milton Brewery is emitting no more light than it was emitting before 27 April 2009, then the restriction on bringing legal proceedings applies. This is reflected in sections 885(2) and 680E (2) of the Sustainable Planning Act 2009. However, the drafting contained in the Bill (sections 319(4) and 274(2)), is different and does not reflect the position as it currently stands under the SP Act. On our reading of sections 319(4) and 274(2) of the Bill, it appears that residents would only be restricted from bringing legal proceedings where the intensity of light emissions is more intense than when the Milton brewery’s original term of registration was created in 2009 (as opposed to the SP Act where the restriction on legal proceedings applies to emissions of light with an intensity that is no more than it was at registration). We submit that the drafting in the SP Act better and more clearly reflects the protection granted to the Brewery in respect of light emissions and should be adopted in the Bill.</p> <p>Please see Annexure A for an outline of the relevant sections of the Bill and the SP Act.</p>
s269 – Responsibilities of owners of registered premises	<p>Previously under s680ZA of the SP Act, it was explicitly stated that a failure to comply with the requirement to publish information on the registered premises’ website did not affect the restriction of an affected person initiating civil proceedings. The Bill is now silent as to the effect of non-compliance with publication requirements. Although Lion does not have an objection in principle to this amendment, Lion would not support the removal of rights arising from inconsequential non-compliance.</p>

## Regulation

We understand that the Regulation is a consultation draft and only an indicative view of how the supporting instruments will operate under the new planning regime. We note that the approach of



the reformed planning regime is to remove process from the Bill and place these provisions in the Regulation. This is generally supported by Lion, provided that the fundamental provisions remain in the legislation. Given the less rigorous process required to amend Regulations, Lion would also expect that there would be significant notice and consultation with stakeholders prior to any amendment of the urban encroachment provisions of the Regulation.

We would welcome the opportunity to discuss any of the above further with you.

Yours faithfully

Leela Gantman

External Relations Director

Lion Beer, Spirits & Wine Australia



## Annexure A Relevant Legislation

### **Section 267(1) of the Bill:**

267 Making or renewing registrations

(1) This section applies to premises if—

- (a) an activity that involves emissions is carried out on the premises; and
- (b) the levels of emissions from the premises comply with—
  - (i) any development approval for the premises; and
  - (ii) any authority under the Environmental Protection Act (an environmental authority) applying to the activity.

### **Section 274 of the Bill:**

274 Restriction on legal proceedings

(1) This section applies to an affected person's claim that another person's act or omission in carrying out an activity of a type stated in section 267(1)(a) at registered premises is, was or will be an unreasonable interference, or likely interference, with an environmental value.

(2) Despite any other Act, the affected person may not take civil proceedings for nuisance, or criminal proceedings relating to a local law, against a person in relation to the claim if the following have been complied with for the act or omission—

- (a) the development approval for the registered premises;
- (b) an environmental authority applying to the act or omission.

(3) However, this section does not apply if—

- (a) a new or amended authority starts to apply for the registered premises; and
- (b) the new or amended authority authorises greater emissions than the original authority of the same type for the premises.

(4) In this section— affected person means the owner, occupier or lessee of premises that are, or were, the subject of an affected area development application—

- (a) made after the commencement; or
- (b) made before the commencement for which a decision notice had not been given before the commencement; or

(c) for premises for which—

- (i) a development approval has been given for the application before the commencement; and
- (ii) a certificate of classification had not been given under the Building Act, before the commencement.

environmental value means an environmental value under the Environmental Protection Act.

new or amended authority, for registered premises, means—

- (a) a new development approval or a new environmental authority authorising the carrying out of an environmentally relevant activity under the Environmental Protection Act on the premises; or
- (b) an amendment to the development approval for, or new environmental authority applying to, the premises; or
- (c) a new environmental authority applying to the premises; or
- (d) an amendment to an environmental authority applying to the premises.

original authority, for registered premises, means the following in effect when the premises were first registered—

- (a) the registration;
- (b) the development approval for the premises;
- (c) an environmental authority applying to the activity on the premises.



**Section 319 of the Bill:**

319 Milton XXXX Brewery

- (1) The brewery on lot 35 on plan SL805565 is taken to be registered under section 267 from 27 April 2009 until 26 April 2019.
- (2) The Milton rail precinct is the affected area to which the registration relates.
- (3) Section 269(3) to (8) applies to the brewery only for a renewal of the registration.
- (4) Section 274(2) applies to a claim relating to an emission of light only if the intensity of the light is more than the intensity of light emitted before 27 April 2009.
- (5) Section 269(2), and schedule 1, table 2, item 5, do not apply in relation to the brewery.

**Section 680E(1) of the SP Act:**

680E Restrictions on legal proceedings

- (1) This section applies to a claim by an affected person that—
  - (a) an act or omission of a person in carrying out an activity at registered premises (a relevant act) is, was or will be an unreasonable interference, or likely interference, with an environmental value; and
  - (b) the relevant act was, or was caused by or caused, the emission of aerosols, fumes, light, noise, odour, particles or smoke.

**Section 885 of the SP Act:**

885 Restriction on legal proceedings for Milton Brewery

- (1) This section applies to a claim under section 680E(1) by an affected person in relation to a relevant act at Milton Brewery.
- (2) If the relevant act was, or caused, the emission of light, section 680E(2) applies to the claim only if the emission was no more than the intensity of light for the relevant act before 27 April 2009.
- (3) In this section—  
affected person see section 680E(6).  
relevant act see section 680E(1).