



16 December 2015

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

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To whom it may concern

**Royal National Agricultural and Industrial Association of Queensland (RNA): Submission on the *Planning Bill 2015 (Qld)* – Urban encroachment**

The RNA has for a number of years been seeking legislative protection against an increasing risk of litigation and claims in respect of its lawful activities.

The increasingly residential character of areas surrounding the Brisbane Showgrounds presents a high risk that new residents may claim against the RNA for activities such as the Royal Queensland Show (**Ekka**), which have been conducted for over 140 years, and may even be able to stop the Ekka or other Brisbane Showgrounds events from proceeding.

The protection of long-established uses against potentially incompatible new uses is a foundational principle of planning law. Recent Queensland cases such as *Holcim (Australia) PL v Brisbane City Council & Ors* [2012] QPELR 572 confirm that this remains good law. Further, it is recognised to be good practice to provide legislative protection to iconic uses, such as Sydney's Luna Park and the Milton Brewery. The urban encroachment provisions of Chapter 7, Part 4 of the *Planning Bill 2015 (Qld)*, carried in large part from the *Sustainable Planning Act 2009 (Qld)*, evidence the need to provide such protection.

However, for various technical reasons, the urban encroachment provisions of the *Planning Bill 2015 (Qld)* do not protect the RNA.

This submission sets out the RNA's request and justification for an effective legislative regime to reduce the risk of litigation caused by urban encroachment on the Brisbane Showgrounds. The submission consists of four diagrams summarising the most practical options for addressing urban encroachment risk at RNA, followed by a Schedule containing a more detailed discussion. If it would assist the Committee, the RNA would be pleased to provide copies of the many previous submissions made by the RNA to government on this topic, and/or detailed drafting of legislative provisions that would ensure the workable operation of the options for addressing urban encroachment risk at the Brisbane Showgrounds.

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# RNA

THE ROYAL NATIONAL  
AGRICULTURAL AND  
INDUSTRIAL ASSOCIATION  
OF QUEENSLAND

The RNA sincerely requests the Committee's consideration of what the RNA considers to be a very severe risk to its future activities.

Please contact Lloyd Dunn – Project Director RNA Development on (07) 3253 3968 if further information is required.

Yours faithfully

Brendan Christou

Chief executive

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## **Preferred options for addressing urban encroachment risk at Brisbane Showgrounds**

Make minor amendments to the Planning Bill to allow registration of the Brisbane Showgrounds for urban encroachment protection

Make more substantial amendments to urban encroachment provisions to more effectively cover a range of facilities, including the Brisbane Showgrounds

Make amendments to the Economic Development Act or RNA Act

## **Option 1** (Refer to section 5 of the Schedule)

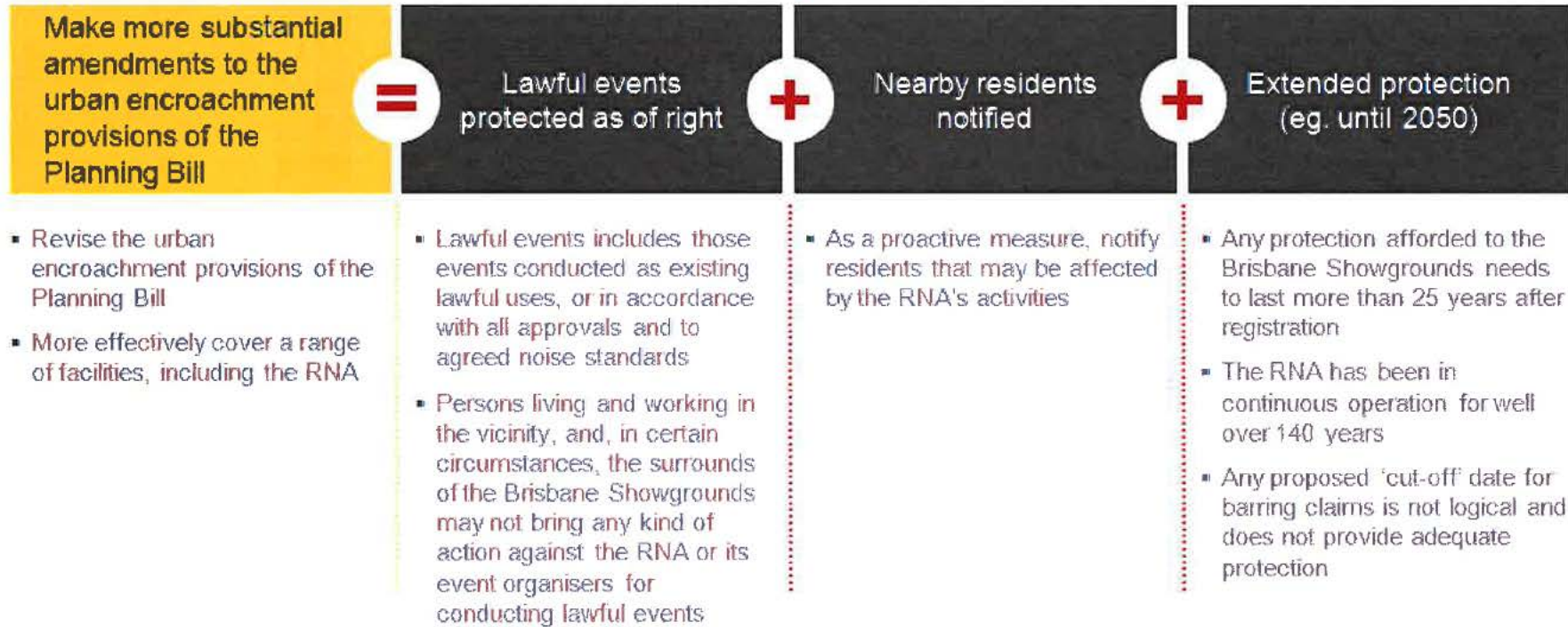
Minor amendments to Planning Bill to extend urban encroachment provisions to Brisbane Showgrounds



Limited legislative protections for Brisbane Showgrounds

- Extend urban encroachment provisions to approvals issued under the Economic Development Act
- New residents are restricted from bringing certain proceedings in relation to lawful uses of the Brisbane Showgrounds
- The RNA must register the Brisbane Showgrounds and register notifications for all lots within the affected area
- Protection lasts for 25 years after registration

## Option 2 (Refer to section 6 of the Schedule)



### **Option 3** (Refer to section 7 of the Schedule)

Make more substantial amendments to the urban encroachment provisions – place these in the Economic Development Act or the RNA Act



Limited legislative protection for RNA's activities / Brisbane Showgrounds

- Revise provisions in the ED Act or the RNA Act to protect lawful activities
- As for option 2, but the changes would either only apply to development in a priority development area (ED Act changes) or to the Brisbane Showgrounds (RNA Act changes)

# Schedule – more details about the options

## 1. Introduction

- 1.1 The RNA owns and operates the Brisbane Showgrounds at Bowen Hills, Brisbane. The RNA stages Queensland's premier annual event, the Ekka, during August each year.
- 1.2 The RNA has undertaken substantial redevelopment activities to ensure the long-term financial viability of the RNA at the Brisbane Showgrounds and to ensure that the Ekka remains in its original home. The areas around the Brisbane Showgrounds are the focus of significant investment for urban infill of medium and high density residential and commercial development.
- 1.3 Despite extensive efforts to manage urban encroachment issues and ensure property owners and residents are aware of the Brisbane Showgrounds, the RNA's activities and the Ekka, this development may result in conflict between the activities of the Brisbane Showgrounds, the RNA and encroaching urban development, by increasing the likelihood of complaints and litigation from landowners and tenants who may be affected by events held at the Brisbane Showgrounds. This could cause severe disruption to events, including the Ekka.
- 1.4 The impact of encroaching urban development on the Brisbane Showgrounds is a severe issue for the RNA and the Ekka. The RNA has been seeking legislative protections for urban encroachment for a number of years, through many submissions and consultation with government. The issue has become particularly time critical, as a large number of new residents are currently moving into the Brisbane Showgrounds and Ekka precinct.
- 1.5 The RNA is deeply concerned that the current legislative regime in Queensland does not adequately protect the Brisbane Showgrounds, the RNA or the Ekka, despite the fact that many of these activities have been undertaken for over 140 years. There is need for legislative reform in order to secure the balance between the needs of new development, the cultural heritage values of the Brisbane Showgrounds and the continued development of the area as a vibrant, multi-purpose inner-city educational and event destination.
- 1.6 The RNA is prepared to engage in any legislative reform that addresses these urban encroachment issues, including amendments to the *Economic Development Act 2012 (Qld)* (**ED Act**) and the *Royal National Agricultural and Industrial Association of Queensland Act 1971 (Qld)* (**RNA Act**).

## 2. Current situation for the RNA

- 1.7 Construction on the Brisbane Showgrounds Regeneration Project (**the Project**) began in 2011. This 15 year and \$2.9 billion project represents the largest brownfield development of its kind in Australia. It is expected to deliver \$300 million per annum in economic benefits to Queensland and create 2,000 jobs.
- 1.8 In partnership with Lend Lease, the Project involves:
  - (a) 340,000 square metres of new residential, commercial and retail buildings, together with 76,000 square metres of new development on RNA retained land;
  - (b) new large animal pavilions;
  - (c) upgrading pavilions, ovals and stands;
  - (d) linking neighbourhood precincts and suburbs with cycle and walking paths;
  - (e) providing a hotel to accommodate Brisbane's business and tourist visitors; and
  - (f) a vibrant urban community consisting of commercial, retail and residential buildings.
- 1.9 Stage Two of the Project is currently underway. In 2015, the first residents have moved into the apartments at the Green and the Kings Gate commercial sector, and the King Street retail precinct is set to open. The four-star Rydges Hotel is planned for opening in early 2016. The

second stage of the Residential development 'the Yards' has commenced construction with residents expected to move in, in mid 2017.

- 1.10 As the RNA's activities inevitably lead to noise, dust and smell, the RNA is concerned that, as the Bowen Hills area becomes more developed, there will be less tolerance for events held at the Brisbane Showgrounds and increased potential liability for the RNA. The RNA seeks to protect activities at the Brisbane Showgrounds with legislation to ensure that its events, including the Ekka, can continue into the future and that no action can be brought against the RNA or its event organisers for conducting the events that it is permitted to conduct.

### **3. Support for change to protect the RNA**

- 1.11 In relation to the *Sustainable Planning and Other Legislation Amendment Bill 2011* (Qld), the Transport, Local Government and Infrastructure Committee acknowledged that the urban encroachment provisions did not apply to the RNA. The Committee said '*ijt agrees that the broader protection is required for the RNA due to its iconic status to protect existing uses from inappropriate urban encroachment, or from unreasonable complaints.*'<sup>1</sup>
- 1.12 Nonetheless, the Bill was passed without amendment and the Brisbane Showgrounds and the RNA are not protected by the urban encroachment protections.

### **4. Three options for providing urban encroachment protection to the RNA and Brisbane Showgrounds**

Sections 5 - 7 discuss the RNA's preferred three options for providing legislative urban encroachment protection.

#### **5. Option 1 – Minor amendments to the Planning Bill**

- 5.1 Like the urban encroachment provisions in the *Sustainable Planning Act 2009* (Qld), the proposed urban encroachment provisions do not apply to the Brisbane Showgrounds as the RNA's current planning approval does not fall into the technical definition of 'development approval'.
- 5.2 The simplest option for providing a level of urban encroachment protection to the RNA is to extend the urban encroachment provisions of the Planning Bill to priority development area approvals granted under the ED Act. This would enable the Brisbane Showgrounds to become registered premises.

#### **6. Option 2 – More substantial amendments to the Planning Bill**

- 6.1 While option 1 would allow the Brisbane Showgrounds and RNA a degree of urban encroachment protection, additional legislative amendments are desirable to ensure that the urban encroachment regime operates as intended. These amendments would be beneficial for other registered premises in addition to the Brisbane Showgrounds.
- 6.2 The RNA submits the following would greatly enhance the effectiveness of the urban encroachment provisions of the Planning Bill:
- (a) Where the RNA (and other event promoters and managers) conducts prescribed events at the Brisbane Showgrounds lawfully and in accordance with all approvals, including the Brisbane Showgrounds Masterplan and the agreed noise standards, persons living and working in the vicinity, and, in certain circumstances, the surrounds of the Brisbane Showgrounds may not bring any kind of action against the RNA or its event organisers for conducting permitted events.
  - (b) The protection must be as of right, and not subject to compliance with registration or notification requirements which may invalidate the protection simply through procedural error.
  - (c) The RNA needs a mechanism that lets people know that they live in an area affected by the RNA's activities.

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<sup>1</sup> Transport and Local Government Committee, Report No. 9 Sustainable Planning and Other Legislation Amendment Bill 2011, February 2012, p. 28.



- (d) There should be no artificial time limits on who is 'affected'. The RNA has been in continuous operation for well over 140 years, so any proposed 'cut-off' date for barring claims is not logical and does not provide adequate protection.
- (e) The urban encroachment provisions should also protect activities that existing lawful uses rather than being authorised by an approval. Many of the Brisbane Showgrounds' and the RNA's activities are existing lawful uses.
- (f) The restrictions on legal proceedings should extend to expansions to use and new approvals.
- (g) There should not be an ability to impose conditions on registered premises, as this is an unnecessary regulatory burden and the ability of the Minister to unilaterally amend them could potentially lead to inconsistent conditions under different approvals.
- (h) The time period for registration should be extended, mindful that premises such as the RNA have longstanding events booked years into the future.

#### **7. Option 3 – Recommend changes to the ED Act or the RNA Act**

- 7.1 If it is not considered possible to amend the Planning Bill to protect the RNA's activities at the Brisbane Showgrounds, the RNA respectfully requests that the Committee recommend early consideration of changes to either the ED Act or the RNA Act to incorporate urban encroachment protections for the RNA and Brisbane Showgrounds.
- 7.2 Any amendment to the ED Act or the RNA Act would only provide protection to the lawful activities in a priority development area (such as the Bowen Hills priority development area, where the Brisbane Showgrounds are located) (ED Act changes), or to the lawful activities of the RNA or the Brisbane Showgrounds (RNA Act changes).