

NOOSA PARKS ASSOCIATION Inc.

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4 January 2016

Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House, George Street, Brisbane
By email to ipnrc@parliament.qld.gov.au

NPA Submission: The Planning Bills

Dear Sirs

Noosa Parks Association (NPA) is Noosa's premier environmental organisation, which provides a voice for the people of Noosa Shire about protecting Noosa's environmental, economic, social and cultural sustainability.

To ensure appropriate and sustainable development, the NPA is strongly committed to legislative and regulatory planning processes that safeguard:

- the autonomy of local planning and development
- the community having a say in local planning and development matters without penalty.

The Private Member's Bills

NPA is very concerned that the three Private Member's Bills introduce many elements that fly in the face of the above principles.

NPA made a submission on 5 July 2015 to the parliamentary Infrastructure, Planning and Natural Resources Committee critiquing the Private Member's Bills; a copy of that submission is included at the end of this document. NPA still stands by the issues it raised and will appreciate the Committee taking these into consideration.

The Government's Bills

We have been heartened that the Government's Bills go some way towards preserving local autonomy and the community having a say. However some areas of concern do exist.

In the Government's Bills, NPA particularly supports that:

1. Ecological sustainability is incorporated in the purpose of the Act with a requirement to advance that purpose by taking into account short and long-term environmental effects, applying the precautionary principle and seeking to provide intergenerational equity.
2. Ministerial powers are defined as in the Sustainable Planning Act (SPA), and not increased as in the Private Member's Bills.
3. In the Court Bill the 'each party pays own costs' provisions are generally reinstated as in SPA prior to LNP Government changes in 2012.

NPA strongly opposes:

1. The removal of key elements out of the Act into subsidiary instruments, making these easier to change at the whim of future governments without parliamentary assent (e.g. guidelines for developing planning schemes, guidelines for assessment managers, public notification, and lapsing provisions).
2. 'Self-assessable' development, currently guided by a code, is to be incorporated into 'accepted development' with no code applicable.
3. Non-compliance with public notification requirements may be overlooked at the discretion of assessment managers, leading to inconsistencies and potential for corrupt practice.

These and other areas are detailed in this submission.

1. Act Purpose - Ecological Sustainability

- 1.1. Support that ecological sustainability is incorporated in the purpose of the Act [s3(1)] with a requirement to advance that purpose [s 3(5)] by taking into account short and long-term environmental effects, applying the precautionary principle and seeking to provide intergenerational equity. [Planning Bill s5(1)]

2. Minister's Powers

- 2.1. Support that Minister's powers are provided in a similar form as in the Sustainable Planning Act (SPA) pre-2012 LNP changes. [Planning Bill Ch 3, Part 6]
- 2.2. Support that the Minister must consider submissions during a call in. [Planning Bill s 101]

3. Exemption Certificates

- 3.1. Support that, where there is referral agency agreement, local government or the chief executive may give an exemption certificate if due to changed circumstances a development is no longer categorised as assessable or the development was erroneously categorised as assessable. [Planning Bill 46(3)(b)(ii) & (iii)]

- 3.2. Oppose that local government or the chief executive has the power to give an exemption certificate to developers on the basis that “the effects of the development would be minor or inconsequential, considering the circumstances. . . .” [Planning Bill 46(3)(b)(i)] This wording is inexact and as such may lead to differing interpretations by state and local governments of the day and could lead to potential for corrupt practice.

Background

SPA has an ‘exempt development’ category [s 231] where “A development permit is not necessary for exempt development” [s 235]. Further SPA sections itemise and describe specific types of works where exemptions apply.

The LNP Planning Bill introduced empowering local governments or the DILGP chief executive to give an exemption certificate for development where a referral agency has provided written agreement. The current Government Planning Bill wording is identical. [s 46]

4. Assessment Managers

- 4.1. Oppose that the guidelines for Assessment Managers have been removed from the Act to the Planning Regulation. This can make them easier to change at the whim of future governments.

We note with concern that, as a result, this item is not part of this parliamentary committee consultation process (although we are aware the Department is concurrently carrying out a consultation process in relation to such instruments).

5. Categories of Assessment [Planning Bill s 43]

- 5.1. Oppose that ‘self-assessable’ development, currently guided by a code, is to be incorporated into ‘accepted development’ with no code applicable.
- 5.2. Appreciate that the current SPA terminology ‘impact assessable’ has been retained to highlight the importance of taking into consideration impacts of proposed developments, rather than the term ‘merit assessable’ as proposed the Private Member’s Bill.

6. Definition of ‘Material Change of Use’

- 6.1. Recommend that the definition of ‘material change of use’ be broadened to “(c) a material increase or decrease in the intensity or scale of the use of the premises” [Planning Bill Schedule 2 Dictionary] . A reduction in scale can have a significant impact, particularly if it results in removing an element that justified the approval in the first place.

7. Public Notification

- 7.1. Oppose that non-compliance with public notification requirements may be overlooked at the discretion of assessment managers, leading to inconsistencies and potential for corrupt practice. [Planning Bill s51(3)]
- 7.2. Oppose that the public notification provisions have been removed from the Act to Development Assessment Rules (DA Rules). This can make them easier to change at the whim of future governments.

We note with concern that consequently the following issues are not in scope in this parliamentary committee consultation process:

- Unlike in the SPA, no guidelines have been provided to local governments to define when development must be impact assessable and therefore publically notified. This creates potential for inconsistencies and could expose the planning framework to corrupt practice.
- Unlike in the SPA, the mandatory requirement of public notification in newspapers has been removed, with this instead being at the discretion of Assessment Managers. [Draft DA Rules, Table 2, s27] Without notice in newspapers, the public is less likely to be alerted to development applications. This may lead to inconsistencies and potential for corrupt practice.

8. Awarding of Costs

- 8.1. Support that the 'each party pays own costs' provisions are reinstated, as provided in SPA prior to 2012 LNP government changes. [P&E Court Bill s59]
- 8.2. Appreciate amendment resulting from departmental consultation process, so s61(1) now does not award cost orders against third parties seeking enforcement orders unsuccessfully.

Award of cost orders in such cases is not in SPA - only in the LNP Court Bill - and would have mean a significant disincentive to members of the public and community groups seeking enforcement orders or interim enforcement orders.

Background: Definition of Enforcement Order

S179 (2) of the Draft Planning Bill defines an Enforcement Order as follows:

"An enforcement order is an order that requires a person to do either or both of the following

- (a) Refrain from committing a development offence
- (b) Remedy the effect of a development offence in a stated way.

Example—

An enforcement order may require a person to pay compensation to someone who, because of the offence, has—

- (a) suffered loss of income; or
- (b) suffered a reduction in the value of, or damage to, property; or
- (c) incurred expenses to replace or repair property or prevent or minimise, or attempt to

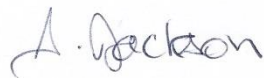
prevent or minimise, the loss, reduction or damage.

9. Creation and Amendment of Planning Schemes

- 9.1. Oppose that , unlike SPA, planning scheme guidance is to be provided in regulations and guidelines which could be changed at the whim of future governments without the need for parliamentary assent. There is minimal requirement in the Planning Bill for consultation with the community ahead of developing a new planning scheme to ensure community aspirations are identified and incorporated.

In conclusion, NPA supports Government reform and urges the above points be incorporated to safeguard local council authority and community input.

Yours sincerely,



Ingrid Jackson
Honorary Secretary
Noosa Parks Association

Attached on following pages please see previous

NPA Submission - LNP Private Member's Planning and Development Bills

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5 July 2015

Ms Erin Pasley, Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
By email to ipnrc@parliament.qld.gov.au

Dear Ms Pasley,

Re: LNP Private Member's Planning and Development Bills

The Noosa Parks Association (NPA) is Noosa's premier environmental organisation, which provides a voice for the people of Noosa Shire about protecting Noosa's environmental, economic, social and cultural sustainability.

In relation to planning and development, in order to ensure appropriate and sustainable development, the NPA is strongly committed to:

- the autonomy of local planning and development,
- residents having a say in local planning and development matters, and
- legislative and regulatory processes that 1) safeguard local council authority and 2) facilitate public input without penalty.

The NPA is greatly concerned that the three LNP Planning and Development Bills introduced in June 2015 propose a diminution of local autonomy and public participation, which flies in the face of democratic process and could open the door to inappropriate development.

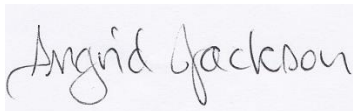
On behalf of the people of Noosa Shire, the NPA strongly objects to any such components of the 2015 Planning and Development (Planning for Prosperity) and (Planning Court) Bills. In particular we urge there should be:

- No transfer or increase of powers to the Minister over local planning and development matters
- No extension of the Planning and Environment Court's power to award costs not only to parties directly involved in court proceedings, but also against any entity that has an interest in a proceeding, but is not party to it
- No reduction of onus of proof on the applicant to prove the merits of their proposal and justify any inconsistencies with the local planning scheme.

- No appointments by the Minister in place of councils of assessment managers
- No redefinition of "material change of use" to only increases in scale and intensity and not to reductions in the scale of the development (often reductions in scale can have significant impacts)
- No reduction of public notification periods for applications and removal of existing requirements for notification to appear in local newspapers. This would lead to submitters making their assessments and submissions without having full information on the development.
- No extension of time frames for applicants to be able to revive a lapsed application.

The NPA supports reform to improve the efficiencies of the planning and development system, but this must not come at the expense of community participation and the role of local government.

Yours sincerely,

A handwritten signature in cursive script that reads "Ingrid Jackson". The signature is written in black ink on a light-colored background.

Ingrid Jackson
Honorary Secretary
Noosa Parks Association