Speech by

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PLANNING (URBAN ENCROACHMENT—MILTON BREWERY) BILL

Mr LANGBROEK (Surfers Paradise—LNP) (3.26 pm): It is my pleasure to rise to contribute to the debate on the Planning (Urban Encroachment—Milton Brewery) Bill. I note the contributions of the honourable shadow minister, the member for Warrego, and other members on this side. I also note the contributions of the members on the government side and the local member, the member for Mount Coot-tha. I want to put on record my support for the bill and also, as the member for Moggill just mentioned, speak about some planning principles. These are the dilemmas that we face as local members, as the honourable member for Callide mentioned.

Especially when we are candidates seeking election we want to carry the torch for anyone who comes to us with any of their issues and these are the sorts of issues people come to us with. This happens in my electorate of Surfers Paradise a couple of times a year. Indy and schoolies are the issues that I will come back to if I am given a little bit of leeway to speak about these planning principles. I know local government has needed special zones, such as the Valley and Surfers Paradise, but at times during schoolies we end up with issues that are seemingly not covered by existing legislation and which do not allow for what the honourable member for Mount Coot-tha, the Treasurer, spoke about—that we need to keep this balance between community and existing use. Residents may have lived in the area before the Rugby field or before the airport or before the schoolies carnival and yet these things have been thrust upon them and they feel that their amenity is affected by what is allowed to go on. They perceive that government departments do not liaise between each other and that affects their lifestyle.

When I speak about the Milton Brewery, I have fond memories of good friends who lived near Suncorp or the old Lang Park. Of course, there was the double-edged sword of being able to visit them in Nairn Street, Milton, and wandering down to Suncorp or Lang Park as it was at the time. Then, of course, there were local people unhappy about the foot traffic going to Lang Park. Similarly, we have seen local residents very unhappy about any major football games being held at Ballymore. We as legislators have to strike a balance in these areas, whether they are airports or football fields, because some local residents may say they do not want them there.

I know the member for Mount Coot-tha has spoken before about traffic restrictions on game days which have made things very difficult for local businesspeople. I am sorry that my friend sold his house in Nairn Street, Milton because now I have to try to find a different park when I go to Suncorp.

As the honourable minister stated in his second reading speech, the legislation seeks to provide clarity and certainty for the operators and employees of Lion Nathan's brewery, as well as developers and residents in the vicinity of the Milton Brewery. The object clause of the bill states that the purpose of the bill is to protect the existing use of the Milton Brewery, principally by restricting certain civil proceedings and criminal prosecutions with regard to its commercial activities. That objective is reflected in part 3, clause 8 of the bill which places restrictions on particular legal proceedings. This section applies to affected persons defined as owners, occupiers or lessees of relevant development applications, as well as future owners of relevant premises. Clause 2 states that the affected person cannot take a civil proceeding or a criminal proceeding relating to a local law against any person in relation to the claim if there has been no

contravention of development conditions and environmental requirements under the Environmental Protection Act 1994 have been complied with.

The main civil action which this legislation seeks to bar is the common law tort of nuisance. As the minister stated, landowners and tenants are entitled to quiet enjoyment of property without interference. Interference with the quiet enjoyment of property gives rise to an action in nuisance. This is a long-held principle of our common law system developed in Britain during the time when a man's home was his castle. Thus, at the outset it appears that this legislation takes away a person's well-established right to the use and quiet enjoyment of their property.

However, as the UK became more industrialised and urban development met industry, it became necessary to examine the right to quiet enjoyment with the reality of modern town planning. The landmark case of Sturges v Bridgman gave the courts the opportunity to adapt the age-old quiet enjoyment principle in light of this reality. Long before council zoning, a physician moved into a property that backed onto the property of a confectioner where he had produced sweets on the premises for a number of years. Upon taking up residence, the doctor decided to construct a consultation room at the back of his property for the purpose of private practice. Effectively, the physician's consulting room and the confectioner's industrial kitchen backed onto each other, which obviously caused problems for the doctor. As such, in the courts he brought an action against his neighbours for nuisance.

The court grappled with the same sorts of issues that one can imagine might arise between residents of Milton and Lion Nathan when Lion Nathan is brewing. In Sturges v Bridgman the main issue was whether the defendant had acquired a right to create a nuisance by way of noise and vibration by virtue of his longstanding practice. Both at trial and on appeal the English courts concluded that a person cannot acquire the right to create a nuisance, and ordered an injunction against the confectioner.

Whilst this is a 19th century case, it is directly relevant to this bill in the sense that at common law the Milton Brewery would not be exempt from legal action by residents whose quiet enjoyment of property may be interfered with on the basis that they were there first. This bill seeks to give industry a legislative protection against such action being taken.

It is necessary to extend this protection for a number of reasons and the minister mentioned one, which is transport planning. As Queensland's population continues to grow, particularly in the south-east, more housing, transport and infrastructure will need to be provided to meet increased demand. It makes sense, then, that high-density development occur around existing public transport hubs such as train stations and bus interchanges. Milton is one such area and, of course, the honourable member for Moggill has just referred to a recent trip of the Travelsafe Committee to Perth, where they looked at transport oriented developments.

The English courts predicted these circumstances where industry meets suburbia. Of course, some time later in south-east Queensland we are facing the same thing. Lord Justice Thesiger mused over some of the problems that might arise as a result of a rigid application of the Sturges v Bridgman principle, taking the example of 'a blacksmith's forge built away from all habitations, but to which, in course of time, habitations approach.' The court found no simple solution to the problem. While it was acknowledged that a strict application of the principle would cause, in some circumstances, hardship and perhaps injustice, they submitted the negation of the principle would lead even more to individual hardship and, at the same time, would produce a prejudicial effect upon the development of land for residential purposes.

Mr Lucas: This reminds me of my tort assignment.

Mr LANGBROEK: It could well have been. This bill seeks to consolidate these views. On the one hand, it recognises that the development of land for residential purposes is a desirable pursuit if we are to meet the challenges of population growth. On the other hand, it recognises that in allowing residential developments to occur in the vicinity of industry those industries may be liable for actions in nuisance. In order to provide certainty to both industry and residents, this bill clarifies their respective legal positions.

Developers may build and residents may live in areas in close proximity to commercial areas. However, they do so in the knowledge that neighbouring industries have the right to carry on their activities, even where it may cause some degree of nuisance. This is an imperfect solution but, realistically, it is the best possible result. In many instances, factories and industries are built on prime real estate, close to public transport and close to the heart of the city. It would be impractical and unjust to order long-established industries to pack up and move out in order to free up land for residential development. At the same time, we cannot afford to protect industry at the expense of providing much-needed housing for Queensland's increasing population. We must strike a balance, as other members have said. I believe that the bill achieves this.

I am sure the 19th century English lords would have approved, too. They said that in some circumstances the Sturges v Bridgman principle should be applied in reference to the circumstances of the case. To quote, 'What would be a nuisance in Belgrade Square would not necessarily be so in Bermondsey.' To use an earlier example, this essentially means that the blacksmith may be able to carry

on his business where the locality is devoted to a particular trade or manufacture carried on by the traders or manufacturers in a particular and established manner, not constituting a public nuisance, that is, the nuisance caused by trade and/or manufacture may not be unreasonable in the context of the locality. The courts, both in Australia and the UK, will measure reasonableness against a locality yardstick. For example, in Dunstan v King, in ruling that a Dandenong sawmill in Victoria was perpetrating a nuisance, the court surmised that the same complaint may not succeed if the character of the neighbourhood had become industrial rather than rural. It is important to note, as I have already referred to, that local government zoning has overcome some of the issues that arise with respect to locality. Of course, in the time that I have been in this place, special zones have been declared in Surfers Paradise and the Valley.

This bill establishes that while from time to time some nuisance may occur, either by way of smells, sound, pollution or any other hazard, as a result of the brewery's commercial operations, it should not be considered unreasonable in these circumstances. To this end, a statute barring actions in nuisance will override the common law with respect to certain claims.

It is important to note that the bill imposes certain obligations on the brewery, developers and sellers to notify prospective buyers of their rights and restrictions with respect to this legislation. These are detailed in part 4 of the bill, which provide penalties for breaches as well as affirming the buyer's right to rescind a contract where disclosure has not been made. This is an important aspect of the legislation because it ensures that any person who proceeds with the purchase is well aware of the issues associated with the area.

As I said at the beginning of my contribution, I am aware that there are no easy solutions to nuisance complaints. Every year thousands of school leavers descend on Surfers Paradise for the annual schoolies festival. While that does not deal with the specifics of this bill, I would appreciate the opportunity of speaking to the House about the fact that I hear complains from residents in neighbouring high-rises about the level of noise from schoolies. This has to do with planning, because these people live within the special zone of Surfers Paradise. There are organised events such as beach parties organised by the Department of Communities. While there is a public perception that schoolies is well maintained and under control, often those parties rage until 3 am, which causes a lot of nuisance and distress for many of my constituents. It would be just as if, as the member for Moggill suggested, the Milton Brewery took advantage of what it may perceive to be the liberties available to it as a result of the passing of this bill and started doing something that it does not currently do. The member for Moggill mentioned that it is important that XXXX, or Lion Nathan, ensures that it thinks of the local residents.

The frustration with schoolies it that many of my constituents have to suffer nuisance and distress. One of my constituents who lives in the Q1 Tower, Dr Clark, has written to me and to the minister for communities. He outlines the problem that the noise from the beach parties goes on until 3 am. Minister Lindy Nelson-Carr, the member for Mundingburra, wrote back and stated that—

... every effort was undertaken to minimise noise levels during the construction of the fenced precinct and throughout the period of the response. These efforts included ensuring the audio system was installed to face the east to direct noise away from residential areas, regularly monitoring noise levels on the beach and into the precinct, and installing a hotline for local residents to express concerns regarding noise levels.

Unfortunately, there was no liaison between the Department of Communities and the police. In his letters to me and to the minister, Dr Clark states that he is very concerned that, when thousands of people rang Surfers Paradise police, the police said that they did not have an audiometer. He wants to know if there is an official permit that allows schoolies to exceed all legal noise levels in a dense residential area to 3 am. He asks what noise levels are allowed until what time. This is of great concern to the people of Surfers Paradise, as it will be to be the people of Milton if, in this case, the brewery does not do what it is supposed to under the requirements of the law. In the case of my constituent I note that we await a response from the minister for communities. Apart from those concerns, I commend the bill to the House.