

Question on Notice

No. 654

Asked on 25 May 2021

MR S KNUTH asked the Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning (HON S MILES) –

QUESTION:

With reference to a number of issues having arisen in my electorate regarding Material Change of Use Approvals (MCU) and breaches of noise standards under the EPA 1994—

Will the Deputy Premier make changes to the State planning act 2016 to ensure that a noise table referenced under the EPA 1994 and EPP (Noise) 2019 is included as a mandatory condition when assessing MCU applications and then specified as a condition on all future MCU approvals that are impact assessable under the act?

ANSWER:

The *Environmental Protection Act 1994* (EP Act) and the *Environmental Protection Policy (Noise) 2019* (EPP Noise) establishes a framework for making consistent, equitable and informed decisions that relate to the acoustic environment.

The objectives of the EP Act and EPP Noise in part underpin and inform a comprehensive system for managing and regulating noise, including environmental authorities under the EP Act, the regulation of noise under the EP Act, which is primarily the responsibility of local governments.

The requirements with respect to noise standards under the EPP Noise must be met without the need for conditions relating to noise to be attached to a Material Change of Use (MCU) approval. As such there is no need to include provisions of the EPP Noise as conditions of development.

In addition, the standards set under the EPP Noise are subject to ongoing review which generally results in increasing regulation applying to uses over time. Specifying noise limits as a condition of approval would see the noise limits fixed in the approval and not able to change as the provisions of the EPP Noise also change. Conditions of development are not able to be amended except with the consent of the approval holder.

Further the enforcement provisions available under the EP Act are far more immediate and direct than those available under the *Planning Act 2016* and thus far more suitable for imposing immediate remedies where noise standards are exceeded.

I am advised the objectives set out in the EPP Noise would not be appropriate to use as a 'one size fits all' condition on development approvals. In some cases, the proposed development will be an environmentally relevant activity, the noise impacts of which are more appropriately regulated under an environmental authority under the EP Act. In other cases, conditioning a development approval may cut across standards established under local laws.

Even where it may be appropriate to include a noise condition in a development approval, the application for the approval must be subject to a detailed, case-by-case assessment against assessment benchmarks and other relevant matters. Conditions on any approvals must be 'relevant or reasonable' – in other words conditions must respond to and be proportionate with the actual impacts of the proposal. In some cases, it may be that the conditions exceed the objectives of the policy or local noise standards. In other cases, a lesser standard may be acceptable.