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Department of Infrastructure, Local Government and Planning
By email to bestplanning@dilgp.qld.gov.au

NPA Submission re: Draft 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.

NPA is very concerned that the LNP private member's bills introduce many elements that fly in the face of these principles, and we are hearten to find that this is much less the case in the Government's bills.

NPA particularly supports that in the Government's draft bills:

1. Ministerial powers are defined as in the Sustainable Development Act (SPA), and not increased as in the LNP private member's bills (LNP bills)
2. As in SPA, there is clear delineation of who is Assessment Manager in each circumstance, unlike the LNP bills which give the Minister greater powers to appoint.
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. Public notification in newspapers is at the discretion of Assessment Managers, rather than mandatory. This could lead to inconsistencies and potential corrupt practice.
2. Non-compliance with public notification requirements may be overlooked at the discretion of Assessment Managers. This could lead to inconsistencies and potential corrupt practice.

3. The ability of the Court to award costs to third parties who take enforcement action unsuccessfully, a significant disincentive to members of the public and community groups.
4. The removal of key elements out of the Act into subsidiary instruments, making these easier to change at the whim of future governments (e.g. guidelines for assessment managers, public notification, and lapsing provisions).

These and other positives and areas of concern are detailed on the following pages.

NPA DETAILED FEEDBACK ON DRAFT BILLS

1. Minister's Powers

- 1.1. Support that Minister's powers are provided in a similar form as in SPA. [Ch 3, Part 7]
- 1.2. Support that the Minister must consider submissions during a call in. [Bill s 99]

2. Exemption Certificates

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 44]

NPA's response:

- 2.1. Support that, where there is referral agency agreement, local government or the chief executive may give an exemption certificate if as in 44(3)(b) - (ii) due to changed circumstances a development is no longer categorised as assessable or (iii) the development was erroneously categorised as assessable.
- 2.2. Oppose that local government or the chief executive has the power to give an exemption certificate to developers on the basis of the wording in 44(3)(b)(i) "the effects of the development would be minor or inconsequential, considering the circumstances. . . ."

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 corrupt practice.

3. Appointment of Assessment Managers

- 3.1. Support that the Draft Planning Regulation [Schedule 6] has the same delineation as SPA regarding who is appointed as Assessment Manager in each circumstance. This contrasts with the LNP Bills which gave greater powers to the Minister to appoint Assessment Managers.
- 3.2. 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 with their removal to the Planning Regulation, this item is not in scope in this current draft Bill consultation process (although we note the Department states it will consult on such instruments after the bills have been introduced to Parliament).

4. Definition of 'Material Change of Use'

- 4.1. 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". [Draft Planning Bill, Schedule 1 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.

5. Public Notification

- 5.1. Oppose that 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 between local governments and for differing interpretations depending on local governments of the day, and could expose the planning framework to corrupt practice.

- 5.2. Oppose the removal of the mandatory requirement of public notification in newspapers, with this instead being at the discretion of Assessment Managers. [DA Rules, Table 2, s 26]

Without notice in newspapers, the public is less likely to be alerted to development applications, thereby significantly reducing community ability to have a say. Leaving this to Assessment Manager discretion may lead to inconsistencies and potential corrupt practice.

- 5.3. Support that some public notification periods in SPA have been retained: at least 15 days for normal applications, at least 30 days for variations to the local planning scheme. [Draft Planning Bill s 51]
- 5.4. Oppose that non-compliance with public notification requirements may be overlooked at the discretion of assessment managers, leading to inconsistencies and potential corrupt practice. [Draft Planning Bill s 51(3)]
- 5.5. Oppose that public notification periods are shorter for major developments involving of three or more referral agencies – only 15 business days, which under SPA is currently 30 business days. [Draft Planning Bill s 51(4)]

- 5.6. Oppose that the public notification provisions have been removed from the Act to Development Assessment Rules. This can make them easier to change at the whim of future governments.

We note with concern that with the removal to the Development Assessment Rules, this item is not in scope in this current draft Bill consultation process (although we note the Department states it will consult on such instruments after the bills have been introduced to Parliament).

6. Awarding of Costs

- 6.1. Support that the 'each party pays own costs' provisions are generally reinstated, as provided in SPA prior to LNP government changes in 2012. [Draft P&E Court Bill s 59]
- 6.2. Support that the following wording in LNP Court Bill s 59(2) is not included in the Government's Court Bill: "The discretion includes the power to order costs against someone who has an interest in the proceeding but is not a party to the proceeding."
- 6.3. Oppose that cost orders may be awarded against third parties seeking enforcement orders unsuccessfully.

This is not in SPA - only in the LNP Court Bill - and would be a significant disincentive to members of the public and community groups seeking enforcement orders or interim enforcement orders.

Background: Draft Bill definitions relating to enforcement order costs

- 1) The legal term "follow the event" means the unsuccessful party will generally be ordered to pay the costs of the successful party.

The Draft Planning & Environment Court Bill s 61(1) states "The costs of a Planning Act proceeding for an enforcement order or an interim enforcement order follow the event, unless the P&E Court otherwise orders."

- 2) 178 (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.

7. Timeframes for Reviving Lapsed Applications

- 7.1. Oppose that lapsing provisions have been removed from the Act to Development Assessment Rules. This would make them easier to change at the whim of future governments.

We note with concern that with this removed to the Development Assessment Rules, this item is not in scope in this current draft Bill consultation process (although we note the Department states it will consult on such instruments after the bills have been introduced to Parliament).

NPA FEEDBACK IN SELECTED AREAS WHERE GOVERNMENT IS SEEKING INPUT

8. Ecologically Sustainable Development

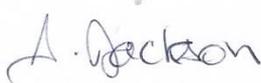
- 8.1. Support the inclusion of “the purpose of the Act is to facilitate ecologically sustainable development” [s 3(1)] and the requirement to advance that purpose when making decisions under the Act [s 3(5)].
- 8.2. Oppose that, unlike in SPA, there is neither guidance on how to advance the Act’s purpose, nor mention of applying the precautionary principle, nor reference to intergenerational equity. [SPA s 5(1)]

9. Categories of Assessment [Draft Planning Bill s 43]

- 9.1. Oppose that ‘self-assessable’ development, currently guided by a code, is to be incorporated into ‘accepted development’ with no code applicable.
- 9.2. Recommend the current terminology ‘impact assessable’ remain, rather than ‘merit assessable’, to highlight the importance of taking into consideration impacts of proposed developments. The current terminology in SPA is ‘impact assessable’ whereas the LNP Draft Bill changed this to ‘merit assessable’.

In conclusion, NPA supports Government reform and urges the safeguarding local council authority and public input without penalty.

Yours sincerely,



Ingrid Jackson
Honorary Secretary
Noosa Parks Association