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Submission Concerning the Proposed "Public Land and Council Assets Local Law 2014"

For the Attention of: The Chief Executive Officer, Brisbane City Council

Authorised by: ACAQ Executive
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We draw attention to Chapter 2, Part 2 - Regulation of Parks

1. We contend that the major regulatory elements of Part 2, i.e. s9, s11 and s12 are poorly drafted, and if implemented will cause confusion and dysfunction.

2. We would suggest that this is not a trivial issue given that Council's own explanatory fact sheet here uses language and logical organisation that differs from the local law it purports to explain. If Council cannot explain the local law it proposes without confusion, then it is hard to see how it can be successfully enforced.

3. We contend that the State already has in place legislation that articulates how the public protected estates within its remit should be managed, and although Council has, in nearly all instances, no legal responsibility to implement the Nature Conservation Act 1992, there are compelling reasons for applying the broad principles of the NCA to the Council managed estate.

4. As an organisation we work hard to educate our members as to the principles of management of the public space they share with others. In particular we emphasise the need to manage the balance between recreational values and natural values of a given location. This process gives rise to a user group that is engaged with the sustainability of the areas where they recreate, and fosters a sense stewardship that makes a major positive contribution to the maintenance of the park. Seemingly arbitrary and confused regulations, on the

other hand, serve to disengage the community from the management imperative and lead ultimately to degradation of the asset value of the park.

5. We understand that the primary purpose of s9 is to regulate the impact of groups, either commercial or non-commercial, upon the "free and fair" access of the individual. Because both groups and individuals have a right to access the public estate, we understand the management intent of Council to be one of facilitating stakeholder cooperation through a system of permits and park bookings. This being so, regulations to restrict placement of placards or posters, and erection of structures etc. as per s9.3 detract from the clarity and intent, and surely could be better handled by other local laws. In the interest of clarity we believe this section should be restricted to addressing the issues of groups and the principles by which regulation is to occur.

6. We understand the purpose of s11 and s12 is to enumerate those types of activities which Council considers inappropriate, totally prohibiting some, and restricting others. This is a flawed approach as will be argued below.
    a. In many cases, parks are State land tenured as reserves for the purposes of recreation, and are administered by Council as trustees under the Land Act 1994 or as trustees under some other deed of trust. Regardless of tenure, where public estate is set aside for purposes of recreation, Council's primary obligation is to manage such estate for maximum benefit of the public.
    b. It is not within Council's remit to discriminate against one form of recreation compared with another. With the passage of time, it is inevitable that novel forms of outdoor recreation will, from time to time, arise, and the lack of understanding of such novel recreation on the part of Council should not give cause for bureaucratic overreach.
    c. It is not within Council's remit to prohibit an activity, and s11 cannot stand in the face of Council's primary obligation to manage for purposes of recreation.
    d. It is, however, reasonable that Council, in executing its management role, should match particular parks with particular activities, to the point of declaring certain activities as being "restricted" to all but designated parks.
    e. It is conceivable that the requirements of an activity can be so specialised that Council is unable to designate a suitable park for that activity, in effect making a particular restriction total. However….
    f. On challenge from a user group, the Council administration needs to be able to demonstrate it has indeed exerted best endeavours to accommodate the activity in question within the City's park system. Application of arbitrary rules such as Activity A is prohibited, Activity B is restricted and so forth inevitably will leave some user groups unhappy, and Council's management open to the challenge that they have failed in their duty to exert best endeavours in maximising the recreational value of a public asset.

7. We suggest that s11 be struck out and s12 describe the principles by which activities should be assessed as being appropriate for any given park. It should be clear that this assessment be applied to all activities. To an extent, s12 as it stands, provides a certain amount of guidance, but is, in our opinion, ambiguous in its drafting, because it does not indicate that the test to be applied is always one of balance between the value of a recreational activity

and its adverse impacts. What is worse is the fact that the examples given only serve to muddy that which should be eminently clear.

8. We suggest that the balance that has to be struck comes down to three components which must be analysed when considering the suitability of an activity for a particular park. Such an analysis makes for transparency of regulatory action, and is, in our opinion more likely to result in compliance, and a better outcome for all stake-holders. The three components to be analysed are –
    a. The recreational value afforded by the park for the activity in question – what is the anticipated participation rate for the activity, and how unique is the location in its ability to sponsor that activity.
    b. The sustainability of the activity within the park – what are the natural values of the park, how unique are they, and how manageable are the impacts of the activity?
    c. The impact of the activity on other users' recreational experiences within that park – what are the other recreational values of the park, what are the participation rates, how unique are they, and how much will they be degraded?

9. We will analyse the existing s12(1) to show why it has multiple problems. The section states - *This section applies to any activity (a restricted activity) that is, or could—*
    a. "*be dangerous*". – This begs further questions - dangerous to whom? Those carrying out the activity or those by-standing, and exactly what risk level warrants an assessment of "dangerous" and who is qualified to make that assessment?
        i. If the intention is to restrict activities that are perceived as presenting a risk of harm to those carrying out the activity, then we would suggest Council already has a problem with mountain biking, skate boarding and rock climbing on their estate. It is not the remit of Council to place extra layers of regulation at the local level, when the issue of dangerous recreational activities is already addressed at the State level by the Civil Liability Act 2003. Surveys of sporting participation show a consistent trend away from team sports to individual activities many of which are characterised as being of elevated risk. It should be Council's role to support, rather than judge, the activities which arise out of this societal trend. A bald requirement that "dangerous" activities be restricted is going to cause conflict and confusion at some point in the future.
        ii. If the intention is to restrict activities perceived as presenting a risk of harm to by-standers, then such a regulation could well be a legitimate exercise of duty of care under Council's Common Law obligations. However, an activity can be judged dangerous to by-standers only when considered in the context of its execution. We would suggest that the decision to restrict a potentially dangerous activity should be handled under the broad balance of our point 8.a versus 8.c above. To go down the road of asserting a blanket coverage of "dangerous" and then enumerating specific exceptions in s12(3), is to commit the administration to endlessly modifying this list of exceptions in the face of the evolving novelty of recreation.

iii. The example given, "*only Council barbeques and fireplaces may be used for fires"*, is misleading at best and nonsense at worst. The reason for restricting where fires can be lit is surely a sustainability issue and sits squarely under our 8.b

b. "*damage, injure or interfere with wildlife*" – When read in conjunction with s12.2, "*A restricted activity may be conducted only at a place designated for that activity, or at a facility provided by Council, and, if not so conducted, is prohibited*." creates the impression that there are activities and locations where it is permissible to damage wild life.
   i. Once again we see confusion arising from the attempt to regulate an action, when what is needed is articulation of the principle on which restriction of certain activities should occur. That principle should be the general one of weighing the recreational value, our 8.a against the sustainability 8.b.
   ii. The example given, "*letting or leaving a dog off leash is restricted to off-leash areas"* is poor given that the predominate reason for keeping dogs on leash is so as not to devalue the recreational experience of non-dog-owners as per our point 8.c

c. "*interfere with vegetation*" – This has a similar problem to our point above. It constitutes a bald assertion that Council may permit the destruction of the natural environment by certain activities and at designated parks.
   i. We would suggest that this needs to be framed to better illustrate the management principle that should be invoked, ie. in those cases where the recreational value of an activity is sufficiently high, and that the activity is perceived as likely to have a high impact on the natural environment, the land manager may elect to selectively destroy some vegetation in the course of installing infrastructure such as tracks and paths in order to preserve the larger part of the natural environment.
   ii. The framing needs to indicate that the intent of the regulation is, to as great an extent as possible, to protect the natural values of Council controlled parks.
   iii. The example given, "*riding a bicycle or a personal mobility device is restricted to a track, pathway or other area designated for the activity*" is appropriate and would make more sense if the s12(1)(c) was reframed as suggested.

d. "*damage or interfere with park infrastructure or the natural features of a park such as sand or rock*" – The comments made in the above two points apply equally here. The framing needs to make clear that the management intent is to strike a balance between the recreational and natural values of any given park.
   i. The example given, "*rock climbing, abseiling or rappelling is restricted to the designated part of the cliffs at Kangaroo Point*" is hardly illustrative. Firstly because the Kangaroo Pt Cliffs are a quarry, not a natural feature. Secondly, because there is no evidence that rock climbing causes "damage" to the features of the cliff face.

Submission ends