

Economic Development and Other Legislation Amendment Bill 2024

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Committee Secretary
Cost of Living and Economics

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Economic Development and Other Legislation Amendment Bill 2024 (Bill)

Thank you for the opportunity to provide feedback on the *Economic Development and Other Legislation Amendment Bill 2024 (Bill)*.

The Property Council of Australia is the leading advocate for one of Australia's biggest industries – property. We are a national not-for-profit organisation established to promote the work of the property industry in delivering prosperity, jobs and strong communities to all Australians. Here in Queensland, the Property Council represents over 400 member companies across residential, commercial, retail, retirement living, industrial, tourism and education sectors. Together with our members we partner with government to investigate and deliver solutions that support Queensland's property sector, including the much-needed delivery of more housing for Queensland's growing population.

Responding to Queensland's ongoing housing crisis will require bold and decisive action and the Property Council welcomes the intent of this Bill to amend the *Economic Development Act 2012 (ED Act)* with the view that it can support the delivery of more homes for Queenslanders swiftly.

Whilst the intent is welcome, the proposed changes are one of the most significant reforms to the ED Act ever proposed in its current form. The Bill is broad and, in some sections, ambiguous. Given the magnitude and far-reaching impact of the reforms, further consultation is required with industry which include the following items:

- Implementation of a comprehensive engagement process with key stakeholders to ensure unintended consequences do not occur.
- Incorporate a broader range of reform opportunities that the PCA has championed for some time. These opportunities are summarised in this submission and are critical to support the private sector unlocking investment and housing for Queenslanders.
- Modification of the Bill in line with this submission to ensure this reform creates certainty, minimises cost, removes the potential for conflicts of interest, and does not delay development.
- Consultation about the important changes proposed to the *Economic Development Regulation 2023* that are currently unknown, impacting investment confidence in PDAs.

The desire to increase housing supply is one that is shared by industry and governments alike, and it should be noted that Economic Development Queensland (EDQ) covers a broad remit, with residential supply being only one component. The amendments to the ED Act

will also impact commercial, industrial and other land uses, and again reinforces the need for broad and comprehensive consultation.

We commend EDQ's desire to create mechanisms that enables swift and efficient operation through the change in its corporate governance.

Initiatives to support a strong and effective EDQ

The property industry is key in solving the state's housing crisis and has consistently advocated for reform to EDQ to support private sector investment in creating housing and jobs in Queensland. The Property Council requests that the following reforms be included as part of the consideration of this Bill:

- Further reforms to empower EDQ to resolve planning approvals, funding and delivery/ownership of catalytic infrastructure particularly where there are conflicting state agency and utility interests, without the need for a place renewal framework.
- A clear remit to pilot and test planned development opportunities with the market, to ensure resources are focused on projects with the greatest chance of success.
- Support and empower EDQ to be deemed interventionist (where appropriate) in order to take long term strategic positions for the betterment of the State (for example, "step in powers" where local governments are not meeting targets in expanding the urban footprint).
- Reform to the PDA development assessment process to ensure approvals are achieved within 30 days, with this reform including:
 - Deemed approval provisions where assessment timeframes exceed the 30 day period.
 - Reform to the regulations to remove State planning policies that conflict with the Development Scheme and inhibit development occurring within a PDA (e.g. DAF, bushfire, environmental controls). These have crept into the DA framework and now impact timeframes, delivery, and viability.
 - Removal of the remit for stage agency input (e.g. DTMR, Education etc.) or for EDQ to have veto rights where State agencies hold up development assessment.
 - Streamlining the process for utilities' approvals / decision making.
 - Removal of the Council MOUs that elongate the approval process.
- Bring the Ripley Valley PDA back under EDQ approval and control.
- Resolve conflicts between Commonwealth and State Environmental regulations, including contemplation of strategic declaration over PDAs.

The Bill needs to address these matters to ensure it achieves the desired intent – that is, to boost housing supply and deliver coordinated infrastructure; rather it seeks to extend EDQ's powers further, without the appropriate structural backing.

Introduction of Place Renewal Frameworks

The Property Council and its members have long championed precinct planning with the view that there needs to be a range of governance models that create public and private partnerships. The Bill introduces the mechanism of a place renewal framework (PRF). There are concerns around the PRF, including:

- the potential duplication of existing planning tools;
- protracted timeframes for the creation of PRFs;
- its implementation creating an embargo on development while the PRF is prepared;
- the commercial impact that the PRF will have on existing landowners and that landholders are not consulted in declaring a PRF; and
- the lack of any appeal rights / compensation where use rights are varied.

The Property Council sees the benefit in EDQ exploring a variety of governance models to explore precinct planning, and again urges further consultation with industry to create a framework that includes input from private sector.

Should the State decide to proceed to introduce the PRF, it is noted that the consultation proposed with respect to declaring a Place Renewal Area (PRA) and preparing an associated PRF is inadequate, with there being no guarantee that landholders will be included.

New s.104AC(4) of the Bill requires that in making a PRA declaration, MEDQ must consult with the relevant local government in the way MEDQ considers appropriate but need not consult any other person. Furthermore, new s.104AI of the Bill requires that MEDQ consult in 'the way it considers appropriate' with the relevant local government. Further new s.104AI requires the MEDQ to consult with a government entity or GOC or 'another person or entity that the MEDQ considers are likely to be affected by the proposed framework'.

At a minimum, the relevant local government and all affected landowners must be consulted. Ideally, the public consultation requirements should replicate those for public consultation in relation to a development scheme. There can be no justification for lesser consultation, given the impact that the PRF will likely have on public entity expectations and private rights.

The time frame for the preparation of this submission has not been adequate given the significance and complexities of the proposed amendments. As such, rather than a detailed analysis of each provision of the Bill, we have set out below a summary of the key themes and concerns of our membership.

Certainty

Industry confidence is underpinned by a regulatory environment that offers certainty. Below is a list of some of the concerns relating to the proposed amendments that industry perceives will create uncertainty and therefore further undermine investor confidence in the market.

Retrospectivity

- The Bill seeks to retrofit a PRF on an existing development scheme and potentially continue to do so as new development schemes are made under the ED Act. The imposition of retrospective obligations is the antithesis of the fundamental legislative principles and will impact adversely on industry confidence, particularly when there hasn't been adequate consultation to consider practical applications.
- Whilst it is noted that a number of existing PDA development schemes encourage the delivery of a certain provision of affordable housing, the amendments seek to override the current process and redefine the obligations by reference to a yet to be prepared amendment to the Regulation. This will significantly impact investor confidence and project viability. These provisions are contrary to the stated position of the State government during the Shaping SEQ process and subsequent Housing Plan delivery. With respect to the Shaping SEQ process, it was stated that such provisions would only be introduced after adequate consultation. The Housing Plan acknowledges the need for a Pilot Process to occur prior to any widespread adoption.
- Further, retrospectively changing the affordable housing requirements within an existing PDA development scheme will have a significant impact on the commercial viability of the private sector's planned development projects and further stall housing supply. Retrospective changes will also undermine the investor confidence and certainty of developing within the existing PDAs, noting most PDA developers have entered into commercial agreements on the basis of the current framework. These provisions should not be retrospectively applied on the above basis.

Compulsory Acquisition

- The purposes for which MEDQ may compulsorily acquire land under new Division 3A are far too broad.
- The first purpose is stated to be *'to provide infrastructure for the benefit of a priority development area'*.
- The second purpose is *'to give effect to a place renewal framework for a place renewal area'*. See new s.20A(1).
- While there are some limitations imposed in new s.20A(2), these are inadequate given the generality of the purpose in s.20A(1).

With respect to the first purpose, it should be limited by reference to both of the following:

- that the infrastructure is identified in the development scheme for the PDA; and
- that the infrastructure is necessary to facilitate development identified in the development scheme for the PDA.

With respect to the second purpose, it should also be limited by reference to one or both of the following:

- that the infrastructure is identified in the place renewal framework for the place renewal area; and
- that the infrastructure is necessary to facilitate development identified in the place renewal framework for the place renewal area.

A cause for additional concern with respect to the ability for the MEDQ to compulsorily acquire land to give effect to a PRF is the limited public consultation in the development of the PRF.

Timeframes for Place Renewal Framework

- The MEDQ has 12 months to prepare a PRF once a place renewal area declaration is made (with the option of extending this period to 18 months)(see new s.104AG(2)).
- This is a protracted lead time, despite the minimal consultation as referred to above.
- There is a genuine concern that this excessively long timeframe will stall development while the private sector waits for the release of the PRF to understand its impact and EDQ fails to progress existing PDA development applications awaiting the making of the PRF.

Lack of appeal

- A feature of the existing ED Act is a lack of appeal rights for applicants dissatisfied with their PDA application outcomes. This unusual position has generally been acceptable to applicants where the process and outcomes are transparent, certain and consistent.
- The lack of appeal rights becomes a matter of much greater significance and concern where retrospective changes to PDA development schemes might lead to more onerous outcomes, assessment and approval (conditioning) powers are expanded in the absence of sufficient consultation and the parameters for the conditioning power are yet to be clarified.

Costs

The amendments in their current form appear to be duplicative in nature (in some aspects) to existing mechanisms and will add further cost to industry.

Increasing the costs to do business requires a clearly articulated framework for industry, and the amendments fail to deliver a clearly defined pricing structure for engaging with EDQ nor does it seek to establish performance targets.

Duplication

- The introduction of the place renewal area declaration and the creation of a RRF are duplicative in nature. The objectives sought by the Bill can already be effectively and efficiently achieved within the existing PDA declaration and development scheme framework, with a minimum of amendment.

For example, MEDQ can undertake strategic leadership and coordination of areas (new s.4(1)(c)) through the existing planning mechanisms under the ED Act. The Bill could provide for MEDQ to take land (subject to better checks and balances) to give effect to outcomes in the existing planning mechanisms; it is not necessary for this power to be linked to a PRF for a place renewal area (new s.20A(1)(b)). The contents of a PRF (see new s.104AH) could be accommodated through an amendment to a development scheme.

There are additional tools such as the new TPI that could be utilised to deal with urgent and emergent circumstances.

Cost Recovery

- While the cost recovery model is appropriate for MEDQ in relation to the preparation of PDA development schemes and PDA development applications, there is concern regarding the scope of fees and charges.
- The amendments allow MEDQ to impose PDA development application fees that cover the cost of the development and the management of assets. These elements should not be included and could result in situations where development application fees are needed to cover development losses for MEDQ delivering development outcomes and managing assets.
- Due consideration must be given to increasing the cost of doing business with EDQ without regulated performance improvement and adequate benchmarking – these improvements and benchmarks are not referred to in the amendments.

Contribution Costs

- There is not enough detail contained in the Bill to determine the cost of the contribution necessary where a development does not provide affordable dwellings. As this is dependent on the definition of 'affordable housing' an assessment of the impact of this provision is not able to be determined at this time. Furthermore, if the definition of 'affordable housing' includes a discounted rent/purpose price for a stated period, the ability to provide this as part of traditional development will be very challenging and will impact the contribution payable.
- Clarity is required, for example, about when a contribution can be paid where a development does not provide social or affordable

housing, and what happens where social and affordable housing has already been delivered within the catchment to the extent required. Is the contribution payable in this instance?

Conflict / Competition

Whilst industry believes it is not the intent of the Bill for EDQ to compete with or find itself in a situation where there is a conflict of interest with the private sector, the ambiguity within the Bill and the absence of detailed consultation makes this a genuine concern. Under the proposed amendments, EDQ will play multiple roles within a PDA, including engaging in competitive activities while also being involved in shaping or enforcing the rules and regulations that govern the activities within a PDA.

Conflict of Interest

- With the increased powers proposed within these amendments (for example, through compulsory land acquisition, social and affordable housing conditioning and PRFs, along with the new corporate governance structure), there is the enhanced potential for conflicts of interest to arise between EDQ's regulatory planning role, and EDQ's expanded investment, development and asset ownership mandate, that could result in outcomes and rules being shaped which support EDQ's investment and development activities and sustainable financial performance.
- With EDQ's mandate stretching across the state, it is critical that this is addressed within the Bill. Any potential for conflict or perceived conflict of interest provides greater uncertainty and enhanced risk for the industry, potentially resulting in less private investment in new and existing PDAs.

Competition

- As EDQ shifts to a commercial sustainable model, the mandate to invest in and develop housing (and industrial and commercial assets) could see it acting in direct competition with the industry's activities. EDQ's financial structure, financial return hurdles, capital sources and total profit and loss targets are not clear from the proposed Bill, nor the extent of government subsidies. This could present an unfair advantage to EDQ in undertaking these activities in a self-development and delivery model.

General Comments regarding the amendments

It appears counterintuitive for MEDQ to own affordable housing, not only does this place a significant ongoing burden on MEDQ, but it also places pressure on an already stretched

Community Housing Provider sector. Further, it appears contrary to the purpose of the Act, being that MEDQ is a facilitatory corporation.

The definition of affordable housing references amendments to the Regulation, which are yet to be amended. This lacks transparency, and at a minimum, the Regulation definition needs to be consulted on concurrently with this Bill.

The Property Industry plays an essential role in delivering the homes our State so desperately needs. Given this, we feel that further, more detailed consultation must occur to ensure that the unintended consequence of this Bill is mitigated.

Please do not hesitate to contact me on [REDACTED] or [REDACTED] if you have any further questions.

Yours sincerely

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Jess Caire
Queensland Executive Director