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The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
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Brisbane QLD 4000

BY POST / EMAIL - sdiic@parliament.qld.gov.au

Dear Committee

Economic Development Bill 2012

This submission is made to you following an examination by UDIA (Qld) of the contents of the Economic Development Bill 2012 (ED Bill) and after consulting with our membership. Our comments are limited to those aspects of the ED Bill that establish an Economic Development Act (ED Act).

The Institute welcomes the ED Bill, in particular the retention of provisions of the ULDA Act that have proven successful at encouraging development through streamlined and less onerous and time consuming processes.

Research commissioned by the Institute reveals that the property development industry in Queensland is the fourth largest contributor to Gross State Product (GSP) and jobs. The industry in 2010/11 directly employed 181,200 people (in full time equivalent terms), generated $18.3bn in value added (or 6.9% of GSP), and contributed $2.7bn in direct and indirect state and federal taxes. The same research also reveals, however, that in the three years between 2007/08 and 2010/11 the industry has been hit hard with a 13% decline in value added.

It follows that a healthy property development industry is essential to driving broad based economic growth in Queensland and a planning system that is efficient, predictable and transparent is one of the vital ingredients to the successful operation of the industry.

The Institute appreciates the Government's acknowledgement of the important role our industry plays in delivering economic growth and jobs in Queensland and sees the ED Bill as playing a role in driving an industry recovery.

With respect to those aspects of the ED Bill relating to the creation of an ED Act, we urge the Government to consider the following:

Provisional Priority Development Areas (PPDAs)

Section 34(3)(b) of the ED Bill states that for an area to be declared as a PPDA "the type, scale, intensity and location of proposed development on the site is consistent with the relevant local government's planning scheme for the area".

The Institute is of the view that requiring consistency with the relevant local government's planning scheme is restrictive and limits the incentive to seek a PPDA declaration. It is proposed that section 34(3)(b) of the ED Bill be amended to replace the words "is consistent with the relevant local government's planning scheme for the area" to "is consistent with the strategic outcomes of the relevant local government's planning scheme for the area".

It is unclear from section 34(3)(b) as it stands as to whether the declaration of a PPDA would be permitted in situations where the local planning scheme zoning is redundant but the proposal is consistent with the adjacent or surrounding zoning (eg. ex-community use land). It is also unclear whether a PPDA could be created in a situation where the local planning scheme has rural land in the urban growth boundary that has been earmarked for future urban development and that future has now arrived (eg. northern beaches in Townsville).

Finally, with regards to PPDAs, page 35 of explanatory notes to the ED Bill appears to be at odds with section 34(3)(b) of the ED Bill when it states that "An example is the proposed development is a use that is the same use proposed under the planning scheme although it may be at an increased intensity".

Priority Development Areas and the Transition of ULDA powers into an ED Act

The Institute welcome the retention of provisions of the ULDA Act that have proven successful at encouraging development through streamlined and less onerous and time consuming processes.

In particular we welcome efficiencies that will transition into an ED Act including:

- Short development scheme preparation timeframes and simple preparation processes
- Simple and efficient development application (DA) processes (e.g. the ability for a DA to be deemed properly made in any circumstance and non-compliance with timeframes not automatically resulting in the lapsing of an application)
- No referral agencies for DAs
- Limited appeal rights

The Institute would urge the Government as part of its ongoing planning reform agenda to incorporate these kinds of efficiencies into the Sustainable Planning Act (SPA). To take one example, proposed developments that are 'consistent' with SPA Planning Schemes should be at most code assessable.

Local Representative Committees

The Institute welcomes in principle the efforts by the Government to establish an ED Act that produces similar outcomes as the ULDA Act, while engaging with local governments in the plan making processes for PDAs, and potentially bringing them within the decision-making framework in relation to development in PDAs.

Chapter 4, Part 3 allows for the Minister for Economic Development Queensland (MEDQ) to establish a Local Representative Committee for an area to help the MEDQ perform their functions in the area.

The functions of a committee for an area include advising, and making recommendations to, MEDQ and the Economic Development Board (EDB) about impact of proposed development in the area and community needs and expectations in the area.

The Institute has some concerns, however, about the potential for conflict of interest to arise where a committee is made up of people who "…represent entities affected by development in an area". Where a committee has previously provided advice and made recommendations to the MEDQ about "…the impact or potential impact of development in the area…" and "…community needs and expectations in the area…" that are adverse to a specific development proposal, the committee may not be in a position to exercise delegated decision making functions independently and objectively. Depending on their composition, and the manner in which they conduct business, there may be some scope for potential challenges to delegated decision-making by such committees due to the potential for conflict of interest to arise. The Institute therefore urges the proposed MEDQ to put in place transparent and accountable protocols to avoid actual or perceived conflict of interest, to ensure that the purpose of the ED Bill is achieved.

Checks and Balances in Decision Making

The ED Bill proposes that the Minister can delegate plan making and authority to decide applications to the MEDQ, the Board, the committee or a representative of these entities. The proposed delegations that can be given from the MEDQ to the EDB and the committee are broad.

While the Institute acknowledges that the MEDQ could withdraw the delegation if MEDQ is not satisfied with the decision making of the committee, this does not apply to decisions that have already been made.

Unlike the ULDA Act or the Development Assessment Panels used in other jurisdictions, there is no overarching accountability mechanism, such as a Ministerial call in power. The Institute is of the view that this is an important check and balance that should be incorporated into the ED Bill, particularly where there are only very limited rights of applicant appeal. Ministerial call in powers should be included for decisions made by delegated entities to ensure that the decisions are consistent with the overarching purpose of the ED Bill "to facilitate economic development and development for community purposes in the state."

Transitional Arrangements

Section 44 of the ED Bill requires that current but undecided SPA DAs lodged prior to the declaration of a PDA continue to be decided under SPA and SPA continues to apply as if the land were not in a PDA. In circumstances where that DA is consistent with the Interim Land Use Plan upon declaration of the PDA, it is the view of the Institute that the opportunity should exist for the applicant to opt into the PDA process and have the benefit of the significant efficiency improvements on offer. Otherwise, early adopters would potentially be penalised by having to follow the relatively inefficient IDAS process under SPA. At a minimum, if an application lodged prior to the declaration is re-lodged after the declaration, there should be provision to transfer the DA fees already paid.

Section 45 of the ED Bill provides that existing SPA development approvals continue to have effect as a SPA development approval. SPA development approvals encompass preliminary approvals, development permits and deemed approvals by definition, but not compliance permits or compliance certificates. The Institute is unclear as to what will happen to existing compliance permits and compliance certificates. It is the position of the Institute that they should also continue to have effect under SPA. It is also unclear from the ED Bill whether subsequent changes or extensions are made and assessed under SPA or under the proposed ED Act.

Government as a developer

It is the position of the Institute that the Government should always seek, in the first instance, tenders / expressions of interest from the private sector to get the best result from development in PDAs rather than act as a developer in its own right.

In particular, it is the Institute's view that the State Government should not be undertaking developments that compete directly with the private sector.

Court Jurisdiction

The ED Bill replicates section 92 of the ULDA Act in allowing the MEDQ to bring a proceeding in the Planning and Environment Court (PEC) for a declaration about matters arising under the Bill relating to PDAs. The Court's jurisdiction is, however, restricted to proceedings brought by the MEDQ. The application of the Judicial Review Act (JR Act) is excluded under the SPA because that Act provides for merits appeals in respect of development decisions, as well as a mechanism for reviewing other decisions by way of declaration. The JR Act was not excluded in the ULDA Act, and this will continue under the ED Bill - neither of which provide for merit appeals. A consequence of this is that the PEC will not have exclusive jurisdiction to review, by way of declaration, all decisions made under the ED Bill. Applicants for PDA DAs will be able to apply to the Supreme Court for statutory orders for review in relation to decisions, including failure to make decisions, pursuant to the JR Act, but the MEDQ will only be able to seek declarations in the PEC. As a result, the judicial review mechanism for decisions relating to PDAs will also be bifurcated, with jurisdiction split between the Supreme Court and the PEC. The Institute recommends that the ED Bill be amended so that the PEC is vested with jurisdiction irrespective of whether the applicant or the MEDQ commences the proceeding. The PEC, being a specialist Court, is better equipped to deal with such matters and it is more efficient to have all such matters dealt with in the same Court.

Appropriate resourcing

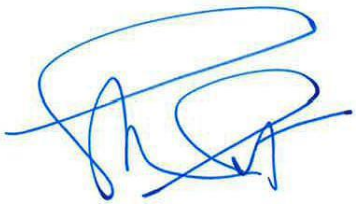
The Institute urges the Government to ensure that there is appropriate resourcing to implement the intentions of the proposed ED Act and that the State maintains a strong role in ensuring that areas nominated as PDA's are successfully delivered.

Ongoing Consultation

UDIA (Qld) appreciate the opportunity to comment on the ED Bill 2012 and would welcome the opportunity to comment on future amendments to regulations and on other documents that give effect to the objectives of the ED Bill.

Yours sincerely

Urban Development Institute of Australia (Queensland)



Marina Vit

Chief Executive Officer