Submission no. 091
26 June 2014
11.1.22

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26th June 2014

The Research Director
State Development, Infrastructure and Industry Committee
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Dear Committee

State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014

This submission is made to you following an examination by the Urban Development Institute of Australia (Queensland) (the Institute) of the contents of the State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014 (the Bill) and after consulting with our membership. Our comments are limited to those aspects of the Bill that amend the Economic Development Act 2012 (ED Act).

The Institute welcomes the red tape reduction proposals in the Bill, including the proposals to strengthen the ED Act to ensure that economic development is supported through streamlined and less onerous and time consuming processes.

With respect to those aspects of Bill that amend the ED Act, we urge the Government to consider the following:

Provisional Priority Development Areas (PPDAs)

At the time the ED Act 2012 was created, the Institute raised concerns with the process of declaring a PPDA. The Institute objected to the requirement in section 34(3)(b) 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 was 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.

The existing section appears to preclude the declaration of a PPDA in a number of situations such as where the local planning scheme zoning is redundant but the proposal is consistent with the adjacent or surrounding zoning (eg. ex-community use land). Another situation that appears to preclude a PPDA declaration is where the local planning scheme has rural land that sits in the urban growth boundary of a Regional Plan that has been earmarked for future urban development and that future has now arrived.

The Institute therefore welcomes the amendments that will improve the ability to declare a PPDA.

The Institute questions**,** however whether there is a need for a test in section 34 of the ED Act regarding how the PPDA relates to other planning instruments. **The Institute therefore recommends that, to maximize the ability to declare a PPDA to foster economic development, sections 34(a) and (b) be deleted entirely**. Consultation between local government and EDQ is required before the declaration of a PPDA and we believe that this consultation process is adequate to ensure that inappropriate declarations of PPDAs are avoided.

Checks and Balances in Decision Making

The ED Act allows the Minister to delegate plan making and authority to decide applications. At the time the ED Act was created the Institute raised concerns that unlike the ULDA Act or Development Assessment Panels used in other jurisdictions, there is no overarching accountability mechanism, such as a Ministerial call in power. The Institute remains of the view that this is an important check and balance, particularly where there are only very limited rights of applicant appeal. The Institute recommends that the Bill include amendments that provide Ministerial call in powers for decisions made by delegated entities to ensure that the decisions are consistent with the overarching purpose of the ED Act.

Existing SPA development approvals

On 1 November 2013, His Honour Judge Searles gave Judgment in *Peet Flagstone City Pty Ltd & Anor v Logan City Council & Ors* [2013] QPEC 61 ("the Judgment").

The Judgment has significant implications not just for the PDA in question but for any area declared as a PDA. Essentially the Judgment restricts the ability of PDAs to be developed in accordance with an EDQ development scheme by making those areas subject to constraints imposed by continuing conditions of approval under the SPA or IPA. Whilst we acknowledge that section 45 of the ED Act protects the entitlements conferred by the SPA development approval that may otherwise have been lost or affected by a declaration of a PDA, it has the unintended consequence that it may operate to stop or regulate further development on land to which the SPA development approval attaches. This is contrary to the policy objectives of the ED Act.

Given that one of the policy objectives of the Bill is to amend the ED Act to drive economic development, the Institute is of the view that this flaw with the ED Act should be rectified in this round of amendments.

The Institute recommends that section 45 of the ED Act be amended and a new section 195A inserted as outlined in the box below.

45 Existing SPA development approvals

1) If immediately before the declaration of an area as a priority development area, an SPA development approval is in effect for land in the area, the approval continues in effect as an SPA development approval

[insert]

2) Despite subsection (1), an SPA development approval in effect in the area cannot stop or regulate PDA self-assessable development, PDA assessable development and PDA exempt development identified:
    a) in an interim land use plan for a PDA;
    b) in a planning scheme for a PDA

    or otherwise stop or regulate development pursuant to a PDA development approval

3) The carrying out of PDA self-assessable development, PDA assessable development, PDA exempt development, or development pursuant to a PDA development approval, on land to which subsection (1) apples is not an DPA development offence to the extent that the development is inconsistent with an DPA development approval

195A Development carried out before this Act

If:

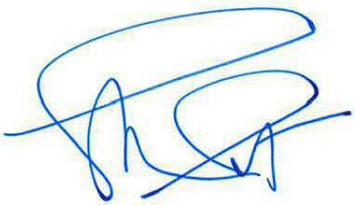
(a) before the day on which the Act commenced a person carried out UDA self-assessable development, UDA exempt development or development under a UDA development approval under the provisions of the now repealed ULDA Act in a UDA area; and
(b) an SPA development approval was in effect for land on which the UDA self-assessable development, UDA exempt development or development under a UDA development approval was carried out;

then, the carrying out of the UDA self-assessable development, UDA exempt development or development under a UDA development approval was not an SPA development offence to the extent that the development was inconsistent with an SPA development approval.

Ongoing Consultation

The Institute is appreciative of the opportunity to comment on the Bill and is welcomes the opportunity to provide more detailed feedback to the Committee or the Department if required.

Yours sincerely
Urban Development Institute of Australia (Queensland)



Marina Vit

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