To the State Development, Natural Resources and Agricultural Industry Development Committee

[redacted]

October 8, 2018

Dear Ministers

Re: Submission from Kathy Davis, a property owner in a PDA re Proposed Amendments to the Economic Development Act 2012 (ED Act) and other Acts consequential to the operation of the ED Act

As an owner and member of the Body Corporate of Bowen Hills Business Centre, [redacted] I am pleased to have the opportunity to express to you the effects that the *ED Act* in its current form have had on most of the owners to the benefit of one owner, as I did in a letter to The Hon Cameron Dick MP dated June 28, 2018 to which I expect a response.

I hope your considerations will provide an opportunity to rectify in legislation the unfair balance that exists in favour of developers over the average person who either cannot afford to take a case to the Planning and Environment Court or would prefer to avoid the opportunity cost of litigation.

My Case Study

My husband, Eric, and I have owned [redacted] since 1994 and it operated as my husband's photographic studio until his retirement when it became a rental investment property. Bowen Hills was declared a Priority Development Area on 28 March 2008.

The first application by the developer for material change of use to combine three business units to develop a childcare centre [redacted] was approved on 14 July 2017.

On October 27, 2017, the developer destroyed common property including mature landscaping, brick paved paths, stairs and concrete edges. His intention was to take possession of common property without consent of the Body Corporate, and without offer of payment or lease, to build an outside play area for the childcare centre, potentially achieving higher capacity and greater profit.

Unlawful works cut electricity to tenants, causing financial loss. They continued following a Body Corporate stop work request issued at an Extraordinary General Meeting held less than two days after the destruction.

The unlawful works caused great concern to the owners who did not know who authorised them. An online search revealed the MEDQ approval and I drew MEDQ's attention to the fact that the application was improperly made with attachments containing a forged signature of Body Corporate consent and a further signature purporting to be that of a member of the Body Corporate executive. During assessment, the Body Corporate minutes

were not requested by MEDQ from the Body Corporate. This assessment process did not meet the expectation of our Body Corporate members of the quality of the decision-making undertaken in the context of Queensland's planning framework. On November 8, 2017, MEDQ revoked the approval on the basis that the application was improperly made.

MEDQ's development application assessment standard and some other operational procedures have been improved since.

Regarding restitution, there was little consultation between the person intending to become the landlord of the childcare centre and the Body Corporate. Nine months followed while the Body Corporate sought restitution. During this time, the commercial unit belonging to my husband and myself was untenanted and we received no income from it.

The applicant applied again for material change of use **–** [redacted] **–** having made changes so that the plans did not involve common property and requesting that MEDQ exercise discretion under Section 82 (b) of the *ED Act* that this application be considered as properly made, despite the Body Corporate still not providing owner's consent. The application was approved.

For the maximum penalty or any penalty in the *ED Act* to be enforced, legal action is required. MEDQ's risk aversion resulted in not furthering prosecution of the developer for non-compliance at the expense of other stakeholders. For reasons of natural justice, the developer in our case study was shown leniency when he exceeded Show Cause deadlines and was given the opportunity to regularise unlawful works. He did this with many delays, complying only after approval of the second application and failing to make restitution as it was before the damage was incurred. We were not shown the same level of natural justice.

If our Body Corporate had been in any other part of Brisbane than a PDA area, Ministerial discretion could not have been used to consider the application properly made. It would have been a decision made by the Brisbane City Council which has greater capacity than MEDQ for investigation and enforcement of conditions.

Recommendations

I am in support of some of the changes proposed in the EDOLA Bill but I respectfully suggest that the Committee should consider including in the *ED Act* or other relevant Acts the following recommendations and provide an increase in budgets to provide investigation and enforcement capacity similar to other jurisdictions:

- Delegated officers to have the ability to issue *on the spot fines*
- Delegated officers to have the ability to *impose immediate stop work orders*
- Legislation to include *a further penalty of 20 penalty units* (or the equivalent at today's penalty unit rate of approximately $2500) *for each day the offence continues* in line with the NSW Government three tier offence scheme and penalties http://www.planning.nsw.gov.au/~/media/Files/DPE/Circulars/planning-circular-commencement-of-provisions-offences-penalties-and-enforcement-2015-07-31.ashx
- *Proceeding with prosecutions* for non-compliance
- *Adherence to deadlines* for conditions to be met

- A *significant refundable deposit required in advance* from developers which can be *placed in trust* and lost if conditions are not met by deadline

The proposed increase in fines plus return on the refundable deposits invested in trust would *increase the investigation and enforcement budget for compliance* and enable greater operational enforcement.

In the Policy Objectives relating to Amendments to the Economic Development Act 2012 and other Acts, it is stated: "There are no significant implementation costs for government associated with the proposed amendments. Where costs do arise, they will be met from existing budget allocations." *My suggestions would provide the funds necessary to increase investigative and enforcement operational capacity*.

This capacity is important because developers often fail to meet conditions. Several conditions relating to a traffic report, waste management and an acoustic report were attached to the second approval.

Previous experience has proven the person who will be the landlord of the childcare centre does not always meet regulatory obligations and not by deadline. Work continued on the development of the childcare centre at [redacted] past the date that the applicant was advised approval had been revoked, as an example of developer non-compliance.

The way the Amendments in the EDOLA Bill have been written, people have to go to court so that a judge can impose significant consequences for non-compliance. Those who have less access to justice are average citizens who cannot afford a court case. For developers, legal action is a business expense, and the people who benefit from MEDQ's risk aversion to pursuing prosecution are developers who are happy to suffer the consequences knowing they could potentially get retrospective approval.

A law without effective enforcement is just good advice. To deter people, it's not only the consequence of being caught that is a deterrent, it's the likelihood of being caught. People need to have a reasonable expectation that if they do something wrong they will be detected and face the consequences. It is the combination of likelihood and consequence that will show this Government is really doing something about compliance and enforcement and developers will have more incentive to obey the law while contributing to Queensland's economic development, job growth, and prosperity.

Prior to the Queensland Government declaring Bowen Hills a PDA area we had 14 years of ownership of [redacted] with greater rights over our site than we have now, because of Section 82(b) of the *ED Act*. This is the second time that the State Government has limited our property owner rights. In 1987, we bought the house we live in at [redacted] and in 2000 it was included on the State Heritage Register after no consultation with us. Prior protection from adjacent development was removed by the Newman Government in 2014 and our heritage place is now affected by surrounding very tall privately certified houses as a result. To prevent this happening to other heritage place owners, I made submissions for the reintroduction of heritage adjoining protections at State and Local Government level, and these have now been introduced. Please consider my suggestions regarding the EDOLA Bill.

Thank you for allowing me this opportunity to submit.

Yours sincerely,
Kathy Davis