Moreton Bay Regional Council

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Our Ref: A17664411
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Committee Secretary
State Development, Natural Resources and Agricultural Industry Development Committee
Parliament House
George Street
BRISBANE QLD 4000

Via email: sdnraidc@parliament.qld.gov.au

Dear Sir/Madam,

Submission on the Economic Development and Other Legislation Amendment Bill 2018

Thank you for the opportunity to make a submission on the Economic Development and Other Legislation Amendment Bill 2018.

As an overall observation, Council is supportive of the majority of the amendments proposed under this Bill. These amendments provide clarity and improve the effectiveness of the legislation in advancing the core purpose of the *Economic Development Act 2012*. In this regard and based on Council's own experience with The Mill at Moreton Bay Priority Development Area, these amendments will assist with the development assessment functions and plan-making process.

Council does however wish to make the following comments on a number of the proposed changes, particularly those dealing with the *Economic Development Act* and the *Planning Act*. Council therefore offers the following comments for the consideration of the Committee:

Proposed Changes to the Economic Development Act

Council wishes to draw to the Committee's attention the following observations relating to some of the proposed amendments to the *Economic Development Act*:

- The new section 40AC deals with the making of new or replacement "interim land use plans". However, the wording of the proposed provision implies that two plans covering the same area can be in place at the same time. Council suggests that the wording of that new provision needs to be expanded to clarify how conflicts between the two plans are to be dealt with.
- New section 51AQ within the proposed transitional provisions deals with issues that may be covered under a Regulation to address transition from regulation under a "development scheme" to regulation solely by the *Planning Act*. That new provision indicates that "…*a Regulation may….for the Planning Act, provide that development on former PDA land….is accepted*

development under that Act if….the Planning Act approval implies the development is to be carried out…". Council suggests that the provision needs to be expanded to explain how a *Planning Act* approval would have been required for "PDA accepted development".

- Existing section 71 explains the interaction between a "development scheme" and the planning instruments/assessment benchmarks that would ordinarily apply had the PDA not been declared. The "development scheme" prevails to the extent of any conflict. The proposed amendments extend the overriding effect from just "development schemes" to all "development instruments" under the *Economic Development Act*. However, no guidance is given in either the existing or amended provision on what constitutes "conflict" in this context. For example, if a "development scheme" is silent on an issue, but a planning instrument contains development requirements, that may or may not be deemed to constitute a "conflict" between the instruments. Council suggests that the proposed amendments to section 71 need to be expanded to provide that clarity.
- Existing section 121 makes it clear that the rights and responsibilities under an infrastructure agreement entered into for the development of land within a PDA continue to apply after cessation of the PDA. Those rights and responsibilities simply transfer to the "superseding public sector entity". Although some changes are proposed to be made to this provision, Council suggests the amendments need to be extended to make it clear that the rights and responsibilities only transfer if specifically agreed to by the "superseding public sector entity" for the infrastructure referred to in the agreement. In Council's view the mandatory consultation required by section 122 is not a sufficient safeguard as there is no obligation under that section for MEDQ to obtain the agreement of the potential "superseding public sector entity" for the infrastructure.
- New section 82A imposes a requirement for MEDQ to issue a "properly made application notice" if a "PDA development application" is properly made. Council suggests that that section needs to be expanded to include an obligation to issue an "action notice" if the application is not properly made and is not otherwise accepted by MEDQ. Such a mechanism exists under the *Planning Act*.
- The proposed amendments to section 83 and the new section 83A indicate that a "PDA development application" will lapse "…*if the applicant fails to give MEDQ any of the stated information within a stated period of at least 6 months after the information request is made*.". While that tends to mirror the approach under the now repealed *Sustainable Planning Act*, it is contrary to the current *Planning Act* regime on which most of the other proposed amendments to the *Economic Development Act* are based. Council therefore suggests that consistency with the *Planning Act* should be adopted.
- The new section 83B imposes an obligation on MEDQ to issue a "notice of compliance with information request" once MEDQ is satisfied the applicant has "…*complied with the information request*…". Given that the lapsing provision in new section 83A only applies to instances where the applicant fails to give MEDQ <u>any</u> of the requested information, some guidance needs to be provided on what constitutes "compliance with an information request", and what applies to instances where only part of the requested information is provided.
- The new section 84E is one of a series of provisions dealing with public notification of a "PDA development application". Under that section, MEDQ may refuse a "PDA development application" if, despite more than one attempt by the applicant to comply with the public notification requirements, compliance has not been achieved, and MEDQ has given 10 business days

notice of its intention to refuse the application. In Council's view there does not seem to be a practical purpose in giving that notice if there is no subsequent opportunity for the applicant to rectify the non-compliance. The new sections 85(1)(a) and (b) make no allowance for rectification to be accepted.

In addition to the proposed changes to the *Economic Development Act*, the Council would like to also bring to the attention of the Committee that the Council is the MEDQ's delegate for The Mill at Moreton Bay, Priority Development Area. In administering the delegated functions of the MEDQ in the assessment of all development applications, the Council is required to refer every development application to the State (DSDMIP) to provide advice and direction on state interests affected by a development proposal. At the present time, the DSDMIP delegate operates under Practice Note 14 where after an application has been referred by Council to the DSDMIP delegate, the Council is meant (under the Practice Note 14) receive a response from the DSDMIP delegate within 5 business days (or a longer period agreed to by the Council). The Council is also not being asked for an extension of time. Experience to date is that the 5 day turnaround is not being achieved by the DSDMIP delegate and in some instances the DSDMIP delegate providing a response on the day of or after the due date that the Council is required to issue an Information Request (being 20 business days). Therefore, the Council requests the Committee consider a deadline for a DSDMIP delegate response about state interests to a development application to be included into the *Economic Development Act* instead of the Practice Note.

This is on the basis that;

(a) the *Economic Development Act* requires an Information Request to be issued within 20 business days; and

(b) the Council has its Information Request items prepared well in advance of the timeframe (giving priority to every development application in the PDA it receives) with the state interest review causing delays to the assessment of a development application.

The Council would be happy to provide further details on this matter to the Committee if it wishes.

Proposed Changes to the Planning Act

Council also wishes to draw to the Committee's attention to the following observations relating to some of the proposed amendments to the *Planning Act*:

- Existing section 66(2) identifies the circumstances under which a condition of a development approval may be inconsistent with a condition of an earlier approval for the same development. One of the current pre-requisites is that the owner must consent to the later condition applying. That pre-requisite is proposed to be changed under the amendments to only require the owner's consent in those instances where the later development application was also required to be consented to by the owner. Because of the impact of having inconsistent conditions on development approvals for the same premises, the owner's consent to the later condition applying should still be required even though they did not need to actually consent to the later application being made. In this regard Council suggests that Section 66(2)(c) should stay in its current form.

- Section 280 contains a table of abbreviated terms with their corresponding meaning according to the context in which the term is used, (the context is listed as headings within the table). Under the proposed amendments, the words "…*a referral agency for the development application for the approval*…" are to be replaced with "…*a referral agency for the development application….and….if a change application for the development approval, other than a change application for a minor change, has been approved - a referral agency for the change application*.". The reference to a "change application" in the amended wording serves no practical purpose in this context as the amended wording falls under the heading "*For a development approval*". "Change applications" are under a separate heading.
- Section 337 of the proposed "transitional and validation provisions" deals with a "…*superseded planning scheme application*…" that "…*includes development that is categorised as prohibited development under….the superseded planning scheme to which the application relates*…". Council does not see benefit in requesting that a development proposal be assessed against the provisions of a superseded planning scheme if the superseded planning scheme categorises the development as prohibited, and is never likely to occur.
- Section 338 of the proposed "transitional and validation provisions" deals with any planning scheme change under the former section 30(4)(e) to address risks emanating from natural events or processes such as bushfires, coastal erosion, flooding and the like. Such a planning scheme change is currently exempted from being categorised as an "adverse planning change" and potentially attracting compensation claims. The proposed amendments will make superficial changes to section 30(4)(e), but the transitional provisions will remove that exemption if the completed change would not meet the criteria in the amended wording of section 30(4)(e)(ii). The circumstances that warrant retrospective effect being given to the proposed change need to be made clear. If the intention is that a change that has not been undertaken in accordance with the additional requirements for planning scheme amendments outlined in chapter 4 of the Ministers Guidelines and Rules, then that should be stated in the new section 338. In Council's view, this is not clear.

Proposed Changes to Other Acts

Other amendments that Council considers are worthy of reconsideration include the following:

- The proposed amendments will include an expansion of the current Alternative Dispute Resolution, (or ADR), process under the *Planning and Environment Court Act 2016* to include "mediators" as distinct from the "ADR registrar". Council would have no concern with this expanded ADR process provided that the "mediators" are appropriately qualified. To this end, the proposed definition of "mediator" needs to be expanded to include minimum qualification requirements.
- The definition of the term "referral agency" is proposed to be removed from the *Coastal Protection and Management Act 1995*. However, the term is still used in a number of places within that Act.
- The definition of the term "assessment manager" is proposed to be removed from the *Vegetation Management Act 1999*. However, the term is still used in a number of places within that Act.

I trust that the matters outlined above by Council are of assistance to the Committee. Once again, thank you for the opportunity to make a submission on the Economic Development and Other Legislation Amendment Bill.

For further information, please contact [redacted]

Yours faithfully,

Stewart Pentland
Director
Planning and Economic Development