



12 October 2018

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

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Dear Sir/Madam

**LGAQ Submission - Economic Development and Other Legislation Amendment Bill 2018**

The Local Government Association of Queensland (LGAQ) is grateful for the opportunity to make a submission on the Economic Development and Other Legislation Amendment Bill 2018.

The Government is to be commended for ensuring that laws concerning the planning and development of Queensland are responsive to contemporary needs.

However, the LGAQ is concerned this legislation further erodes the ability of councils and their communities to have a say in the size, shape and pace of development in their region.

At a time when the community is acutely aware of the need for transparency and accountability in government decision making, this Bill strikes a worrying chord.

Operation Belcarra has reminded us that all levels of government need to ensure that community trust is always front of mind. Councils are the level of government closest to community and best placed to understand their aspirations. Ensuring that a genuine open partnership exists between the State and Councils when making decisions on priority development, should be paramount if the communities needs are to be met.

We urge the committee to consider this submission's recommendations to ensure the final legislation better reflects the concerns and aspiration of local Queensland communities.

For further information, please do not hesitate to contact [REDACTED]

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Greg Hallam', is written over a blue circular scribble.

Greg Hallam AM  
CHIEF EXECUTIVE OFFICER

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## **LGAQ Submission**

### ***Economic Development & Other Legislation Amendment Bill 2018***

**Local Government Association of Queensland Ltd**

**12 October 2018**

## The Local Government Association of Queensland

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association set up solely to serve councils and their individual needs. LGAQ has been advising, supporting and representing local councils since 1896, allowing them to improve their operations and strengthen relationships with their communities. LGAQ does this by connecting councils to people and places that count; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and delivering them the means to achieve community, professional and political excellence.

### Executive Summary

The LGAQ is pleased to contribute to the Parliamentary Committee process associated with the *Economic Development and Other Legislation Amendment Bill 2018* (the Bill) which was introduced to Parliament on 19 September 2018 by the Honourable Cameron Dick MP, Minister for State Development, Manufacturing, Infrastructure and Planning.

The Bill proposes amendments to a range of Acts including the *Building Queensland Act 2015*, the *Economic Development Act 2012* (ED Act) (and other Acts consequential to the operation of the ED Act), the *Planning Act 2016*, the *Planning & Environment Court Act 2016*, the *Queensland Reconstruction Authority Act 2011* (QRA Act), the *Sanctuary Cove Resort Act 1985* and the *South Bank Corporation Act 1989*, and proposes to repeal the *Southern Moreton Bay Islands Development Entitlements Protection Act 2004*.

The LGAQ has prepared a detailed response below in relation to specific provisions of the Bill and has identified 9 key issues of concern for local government, related specifically to the amendments proposed to the ED Act and the QRA Act:

- Categorisation of development under the ED Act
- Provisional Priority Development Areas (PPDAs)
- Provisional Land Use Plans (PLUP) and Draft PLUPs
- PDA declaration & Interim Land Use Plans (ILUPs)
- Cessation of PDAs and PDA-associated development
- Funding of sub-regional infrastructure
- Infrastructure agreements
- PDA exemption certificates
- Broadening of Queensland Reconstruction Authority (QRA) functions.

The LGAQ's primary concerns relate to the proposed amendments to the ED Act that appear to broaden the powers of the Minister for Economic Development Queensland and could result in circumvention of local government planning scheme requirements and State planning instruments. Although acknowledging the purpose of the ED Act "to facilitate economic development, and development for community purposes, in the State", the LGAQ maintains this should not be at the expense of transparent and accountable processes and the local decision making of democratically elected councils. This is particularly a concern at a time when the community is acutely aware of the need for transparency and accountability in government decision making.

In summary, the proposed legislation does not provide the necessary safeguards to avoid potential misapplication and that Queensland councils only support the use of PDAs by Economic Development Queensland to facilitate development where undertaken in consultation with and **with the full agreement by local government**, including full agreement regarding infrastructure planning and expenses recovery.

The LGAQ urge the Committee to consider the following 11 recommendations made in its submission:

**Recommendation 1: The LGAQ requests that Economic Development Queensland genuinely engage with local government and the LGAQ in the drafting of the revised Economic Development Regulation requirements, including the types of development that are proposed to be prescribed as PDA accepted development and PDA assessable development.**

**Recommendation 2:** The LGAQ recommends that the a PPDA should differ from a PDA and that the additional requirement that a PPDA declaration may only be made if *'there is an overriding economic or community need to start the proposed development quickly'* (ED Act, section 34(3)(b)) must be retained.

**Recommendation 3:** The LGAQ recommends that the additional requirement for PPDA's to *'not compromise the implementation of any planning instrument applying to the area'* (ED Act, section 34(3)(a)) must be retained, or otherwise modified to ensure that a PDA does not adversely impact on local governments ability to maintain and provide for the land once it is returned to council to manage.

**Recommendation 4:** The LGAQ recommends the existing requirement for a PLUP to *'not compromise the implementation of any planning instrument applying to the area'* (ED Act, section 35(2)(b)) must be retained, or otherwise modified to ensure that a PDA does not adversely impact on local governments ability to maintain and provide for the land once it is returned to council to manage.

**Recommendation 5:** The LGAQ recommends that section 13(3) of the ED Act be amended to include a requirement for the Minister for Economic Development Queensland to obtain the agreement of, in addition to consulting with, each relevant local government in planning for, or developing in a PDA.

**Recommendation 6:** The LGAQ requests that Economic Development Queensland commit to engaging with local government and the LGAQ in the drafting of the revised Economic Development Regulation requirements, including provisions related to the making of cessation arrangements for individual PDAs.

**Recommendation 7:** The LGAQ seeks confirmation that the Bill will ensure adequate funding for the provision of infrastructure necessary to support the development of PDAs.

**Recommendation 8:** The LGAQ recommends that section 122 of the ED Act, or similar, is amended to require the Minister for Economic Development Queensland to obtain the full agreement of each relevant local government, on the terms of an infrastructure agreement for a PDA, before the agreement is established.

**Recommendation 9:** The LGAQ recommends that the proposed new section 71A of the ED Act be amended to require the Minister for Economic Development Queensland to both consult and obtain agreement with local government prior to issuing a PDA exemption certificate.

**Recommendation 10:** The LGAQ recommends that the roles and responsibilities of State Government departments in relation to disaster management, be clearly defined and managed to remove any potential confusion regarding the relationship between the QRA Act and Queensland's Disaster Management Arrangements.

**Recommendation 11:** The LGAQ recommends that section 10 of the QRA Act be amended to include an explicit requirement for the QRA to consult with each relevant local government in undertaking its main functions.

## Response to specific provisions of the Economic Development and Other Legislation Amendment Bill 2018

### Economic Development Act 2012

#### 1. Introduction

The *Economic Development Act 2012* (ED Act) came into effect on 1 February 2013 and repealed the *Urban Land Development Authority Act 2007* and the *Industrial Development Act 1963*. The ED Act brought together and expanded the powers and functions of the former Minister for Industrial Development Queensland (delivered through the Property Services Group) and the Urban Land Development Authority (ULDA).

The LGAQ has consistently maintained concerns with the ED Act where it erodes local governments' role in land use planning and promotes State Government intervention in local decision making. These concerns are particularly relevant where it is anticipated the priority development areas (PDAs) and their long-term financial implications are to be handed back to councils.

#### 2. Categorisation of development

Clause 19 of the Bill proposes to amend section 33 of the ED Act to align the terminology for development categories with that used in the *Planning Act 2016* (i.e. accepted development instead of self-assessable and exempt development). In addition, this proposed change introduces the ability for a regulation to categorise development.

Specifically, clause 69 in the Bill proposes to insert a new paragraph into section 176 of the ED Act to provide for a regulation to identify PDA assessable development and PDA accepted development in one or more PDAs.

Providing for a regulation to categorise development is a new feature for the ED Act and could result in a local government not being afforded the opportunity to review and provide comment on the proposed regulation that categorises development for land that is in its local government area. Local government is not merely 'another stakeholder' and must be regarded as a genuine partner and level of government when considering the operation of the regulation.

**Recommendation 1: The LGAQ requests that Economic Development Queensland genuinely engage with local government and the LGAQ in the drafting of the revised Economic Development Regulation requirements, including the types of development that are proposed to be prescribed as PDA accepted development and PDA assessable development.**

#### 3. Provisional Priority Development Areas (PPDAs)

Clause 22 of the Bill proposes the removal of section 34(3) of the ED Act and the requirement that a PPDA can only be made if:

- *the type, scale, intensity and location of proposed development for land in the area does not compromise the implementation of any planning instrument applying to the area; and*
- *there is an overriding economic or community need to start the proposed development quickly.*

The justification for the proposed amendments are provided in the Explanatory Notes (page 24) that the additional criteria for PPDAs has 'proven overly restrictive in declaring PPDAs'.

Currently, section 34 of the ED Act is somewhat of a safeguard for local governments against the threat of a PPDA being declared that would have ramifications in terms of implementing the planning direction for the area of which the PPDA is a part.

The LGAQ is concerned that the removal of these additional requirements, broadens the powers of the Minister for Economic Development Queensland and could result in a PPDA being used or implemented inappropriately to circumvent local government planning scheme requirements and would also override State planning instruments. In addition, the changes could also allow/encourage out of sequence development, which is currently controlled by the South East Queensland Regional Plan and local government infrastructure plans.

The LGAQ understands the purpose of the ED Act is “to facilitate economic development, and development for community purposes, in the State” (ED Act, section 3), but this should not be at the expense of transparent and accountable processes and local decision making of democratically elected councils. This is reinforced through the LGAQ Policy Statement which states:

*6.1.1.1 Local government should be recognised as the sphere of government immediately responsible for integrated land use planning and management.*

*6.1.1.5 Local government opposes State Government land use planning policy or intervention that inhibits local decision making.*

Under the *Planning Act 2016*, a temporary local planning instrument can already be made to suspend, or otherwise affect, the operation of a planning scheme or planning scheme policy if there is significant risk of serious adverse cultural, economic, environmental or social conditions happening in the local government area, and the making of the TLPI would not adversely affect State interests. A TLPI is short term in nature, having effect for up to 2 years. Similarly, a PPDA is short term in nature, ceasing 3 years after it is declared, and should only be used for **urgent or emergent circumstances**.

It is noted that the proposed amendments to the ED Act do include a new section 34(2)(b)(iii) that requires, in making the declaration, regard to be had to the impact that the *Planning Act 2016* may have on the proposed development if the declaration were not made. This appears to mean considering how the proposed development would be treated under the *Planning Act 2016* if the land were not declared a PPDA. However, this would not afford the same protections for a local government as the current section 34(3) of the ED Act.

The LGAQ understands that in some cases, PDAs may be proposed to facilitate development that is not currently envisaged by a planning scheme however, **it is important that a PDA does not circumvent local communities who will be most affected by the development** and does not adversely impact on local governments’ ability to maintain and provide for the land once it is returned to council to manage. Councils invariably inherit PDAs and it is essential that infrastructure and services are provided to standards that meet local requirements and don’t come at a cost to the broader community.

The LGAQ notes that as currently drafted, the proposed amendment to remove section 34(3) of the ED Act is inconsistent with the intent for PPDA as expressed in the original Explanatory Notes for section 34 of the Economic Development Bill 2012 which states as follows:

*"Provisional PDAs are intended to apply in very limited circumstances only where development can be brought to the market quickly and where the development is consistent with community expectations ...*

*Provisional PDAs are intended to provide for development that is consistent with community expectations as expressed in the local government's planning scheme. 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. Development sites are generally small, distinct sites containing single uses, where development can be progressed swiftly utilising the planning regime of this Act and brought to the market generally within the life of the provisional PDA."*

Given the limited circumstances in which PPDA were intended to be used, the LGAQ does not support the proposed amendments in clause 22 of the Bill.

**Recommendation 2:** The LGAQ recommends that the a PPDA should differ from a PDA and that the additional requirement that a PPDA declaration may only be made if '*there is an overriding economic or community need to start the proposed development quickly*' (ED Act, section 34(3)(b)) must be retained.

**Recommendation 3:** The LGAQ recommends that the additional requirement for PPDAs to '*not compromise the implementation of any planning instrument applying to the area*' (ED Act, section 34(3)(a)) must be retained, or otherwise modified to ensure that a PDA does not adversely impact on local governments ability to maintain and provide for the land once it is returned to council to manage.

#### 4. Provisional Land Use Plans (PLUP) and Draft PLUPs

Currently section 35(2)(b) of the ED Act requires that a PLUP must '*not compromise the implementation of any planning instrument applying to the area*'. Clause 23 of the Bill introduces a new concept of a draft PLUP through replacement sections 35 and 36 of the ED Act and in doing so, proposes to remove this existing restriction in declaring a PLUP.

The LGAQ understands the purpose of a draft PLUP is to apply in the short term (up to 60 business days) and that replacement section 36 of the ED Act provides for the draft PLUP to take effect immediately on the commencement of the declaration regulation.

Proposed new section 36C(3) of the ED Act will require the Minister for Economic Development Queensland to consult with the relevant local government on the draft PLUP before a draft PLUP is finalised, but only in the way it '*considers appropriate*' or based on '*reasonable endeavours*'. This level of consultation on a draft PLUP does not afford the same protections for local government in terms of its planning direction for the area, including the PDA or PPDA, as the current section 35(2)(b) of the ED Act.

Similar comments apply in relation to the proposed new process for the Minister for Economic Development Queensland to amend a PLUP in the proposed new chapter 3, part 2, division 1, subdivision 2 of the ED Act (clause 24 of the Bill).

**Recommendation 4:** The LGAQ recommends the existing requirement for a PLUP to '*not compromise the implementation of any planning instrument applying to the area*' (ED Act, section 35(2)(b)) must be retained, or otherwise modified to ensure that a PDA does not adversely impact on local governments ability to maintain and provide for the land once it is returned to council to manage.

#### 5. PDA declaration & Interim Land Use Plans (ILUPs)

Clauses 25 and 26 of the Bill relate to the declaration of a PDA and propose a range of amendments to introduce greater flexibility into the processes for making and implementing development instruments in PDAs. These amendments include an extension to the expiry date for ILUPs to be up to two years, for multiple ILUPs to be made if each plan regulates development in a separate part of the proposed area but the plans together regulate the entire area, and for the ILUP to take effect immediately on the commencement of the declaration regulation.

The current sections 38 to 40 of the ED Act do not require that the relevant local government be consulted prior to the making of an ILUP and this has not changed with the proposed amendments in the Bill.

The LGAQ understands there is a general requirement for the Minister for Economic Development Queensland to consult with each relevant local government in planning for, or developing in, PDAs (ED Act, section 13(3)) generally, but is disappointed that the proposed legislative amendments have not extended to provide for obtaining **full agreement** by a local government in planning for, or developing in, a PDA.

The LGAQ Policy Statement is a definitive statement of the collective voice of local government in Queensland which identifies how local government seeks to engage with and be recognised by State and Federal Governments. In relation to PDAs, the LGAQ Policy Statement states:

*6.1.2.8 Local government supports the use of Priority Development Areas (PDAs) by Economic Development Queensland to facilitate development in specific locations only where undertaken in consultation with and with the full agreement by local government, including full agreement regarding infrastructure planning and expenses recovery.*

**Recommendation 5: The LGAQ recommends that section 13(3) of the ED Act be amended to include a requirement for the Minister for Economic Development Queensland to obtain the agreement of, in addition to consulting with, each relevant local government in planning for, or developing in a PDA.**

## **6. Cessation of PDAs and PDA-associated development**

Under the existing cessation provisions of the ED Act (Chapter 3, part 2, division 4, subdivision 2), if land ceases to be in a PDA:

- (a) the PDA development approval is taken to be a Planning Act development approval;
- (b) outstanding PDA development applications continue to be decided under the ED Act (and, if approved, become Planning Act development approvals);
- (c) the relevant local government resumes responsibility as the enforcement authority for the land; and
- (d) the lawful use of premises in a PDA becomes a lawful use under the Planning Act.

This position remains unchanged under the Bill. However, the provisions under clause 39 of the Bill do introduce the ability for a regulation to prescribe:

- the responsible entity for a change application;
- accepted development where the approval implies that the development is to be carried out and the development was accepted development under the PDA approval; and
- “another matter necessary or convenient to give effect to the transition from the PDA development approval to the Planning Act development approval for which this Act does not make provision or sufficient provision”.

The final item listed here is very broad. It is understood from the Explanatory Notes (page 43) that this is intended to allow the making of cessation arrangements for individual PDAs. As such, it would be desirable for there to be consultation with local government before making such a regulation.

**Recommendation 6: The LGAQ requests that Economic Development Queensland commit to engaging with local government and the LGAQ in the drafting of the revised Economic Development Regulation requirements, including provisions related to the making of cessation arrangements for individual PDAs.**

## **7. Funding of sub-regional infrastructure**

The Minister for Economic Development Queensland currently sets sub-regional charges and value capture charges for development in PDAs in its infrastructure funding framework. In the event a PDA is revoked, existing PDA development approvals will convert to become development approvals under the Planning Act.

The LGAQ is concerned the limitation proposed by clause 39 of the Bill (which will insert section 51AQ in the ED Act), will restrict local government from imposing infrastructure charges where the infrastructure funding framework is no longer maintained for a former PDA.

**Recommendation 7: The LGAQ seeks confirmation that the Bill will ensure adequate funding for the provision of infrastructure necessary to support the development of PDAs.**



## 8. Infrastructure agreements

Clause 62 of the Bill proposes to replace section 120 of the ED Act with new sections 120 and 120A related to infrastructure agreements.

The LGAQ supports the new provisions which expand on and clarify the current section 120 of the ED Act to state that an infrastructure agreement entered under the Planning Act prevails over a PDA development approval to the extent of any inconsistency.

It is noted that proposed section 120A captures infrastructure agreements that are entered into under the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009* and affords them the same priority over PDA development approvals as infrastructure agreements entered into under the *Planning Act 2016*. The LGAQ also welcomes this proposed amendment, which should assist those local governments in South East Queensland that are involved with distributor-retailer entities.

Clause 64 of the Bill proposes amendments to section 122 of the ED Act and the provisions regarding consultation with public sector entities before entering into particular infrastructure agreements. It is noted the existing requirement for the Minister for Economic Development Queensland to consult with local government before entering into an infrastructure agreement likely to continue beyond cessation of the PDA (ED Act, section 122(2)) will be retained and clarified to recognise infrastructure for a PDA may not necessarily be located within a PDA or within PDA-associated land.

However, given the land in a PDA is ultimately returned to a local government to manage, the LGAQ maintains its position that local government should be afforded the opportunity in these circumstances, to **agree to** the terms of an infrastructure agreement and if necessary, request amendments to the infrastructure agreement before it is entered into by the Minister for Economic Development Queensland.

As stated above, this position is reflected in the LGAQ Policy Statement:

*6.1.2.8 Local government supports the use of Priority Development Areas (PDAs) by Economic Development Queensland to facilitate development in specific locations only where undertaken in consultation with and with the full agreement by local government, including full agreement regarding infrastructure planning and expenses recovery.*

**Recommendation 8: The LGAQ recommends that section 122 of the ED Act, or similar, is amended to require the Minister for Economic Development Queensland to obtain the full agreement of each relevant local government, on the terms of an infrastructure agreement for a PDA, before the agreement is established.**

## 9. PDA exemption certificates

Clause 78 of the Bill introduces exemption certificate for PDA assessable development. The circumstances in which the Minister for Economic Development Queensland may give an exemption certificate is equivalent to those identified in the *Planning Act 2016* for a local government.

While there is a requirement for the Minister for Economic Development Queensland to consider any relevant State Interest before giving a PDA exemption certificate, there **does not appear** to be any requirement for the Minister for Economic Development Queensland to consult with the relevant local government prior to issuing the exemption certificate. Given that a PDA exemption certificate attaches to premises and any use that is a natural and ordinary consequence of development carried out under the PDA exemption certificate will be taken to be a lawful use, this will be of concern to councils that ultimately inherit any consequences.

**Recommendation 9: The LGAQ recommends that the proposed new section 71A of the ED Act be amended to require the Minister for Economic Development Queensland to both consult and obtain agreement with local government prior to issuing a PDA exemption certificate.**

## **Planning Act 2016**

The LGAQ welcomes the range of amendments proposed to address some of the operational inefficiencies regarding the *Planning Act 2016*.

For example, the proposed amendments to validate infrastructure charges notices (ICNs) that did not include reasons and were issued under the repealed *Sustainable Planning Act 2009* since 4 July 2014, will assist in providing certainty for local government, industry and the community.

In addition, the LGAQ supports the proposed amendments to the *Planning Act 2016* to remove the requirement for a submitter appellant to serve a notice of appeal to all other submitters to the development application, and introduce the option to serve a relevant document via a document containing a stated website or other electronic medium at which a relevant document may be viewed or downloaded. These reasonable amendments respond to the changes in technology and will reduce the resource burden on councils particularly in instances when submitter numbers to a development application are significant.

## **Queensland Reconstruction Authority Act 2012**

### **10. Broadening of Queensland Reconstruction Authority functions**

The QRA Act currently limits the scope of the QRA reconstruction functions to facilitating ‘flood’ mitigation, recovery and resilience.

Clauses 198 to 215 of the Bill propose various amendments to the QRA Act to amend and expand the QRAs purpose and functions. The Explanatory Notes (page 2) state that the proposed amendments reflect the Government endorsed appointment of QRA as the State’s lead agency responsible for disaster recovery, resilience and mitigation policy in Queensland, in April 2016.

In doing so, it appears the legislation provides directive capacity of the QRA over other state government departments, outside of the usual Queensland Disaster Management Arrangements.

The broadening of the QRA powers has the potential to result in confusion and a lack of clarity about the relationship between the QRA Act and the *Disaster Management Act 2003*, particularly with regard to the roles and responsibilities of various State Government departments in disaster management. There is a need to ensure a clear distinction between the primary roles/responsibilities of the QRA, Queensland Fire and Emergency Services and Inspector-General Emergency Management. If roles and responsibilities are not appropriately managed at a State level, it will create issues for local government and its communities.

**Recommendation 10: The LGAQ recommends that the roles and responsibilities of State Government departments in relation to disaster management, be clearly defined and managed to remove any potential confusion regarding the relationship between the QRA Act and Queensland’s Disaster Management Arrangements.**

Furthermore, section 4A(c) of the *Disaster Management Act 2003* makes local government “primarily responsible” for managing events in their area. The *Disaster Management Act 2003* defines an event as including all stages of the comprehensive approach to disaster management (prevention, preparedness, response and recovery). Given their primary role in managing disaster events, there is a need to ensure local governments are consulted by the QRA in the carrying out of its functions.

**Recommendation 11: The LGAQ recommends that section 10 of the QRA Act be amended to include an explicit requirement for the QRA to consult with each relevant local government in undertaking its main functions.**