19 April 2022

Committee Secretary
Transport and Resources Committee
Parliament House
George Street
Brisbane Qld 4000

BY POST/EMAIL – trc@parliament.qld.gov.au

Dear Committee Secretary,

RE: Building and Other Legislation Amendment Bill 2022

Thank you for the opportunity to comment on the Building and Other Legislation Amendment Bill 2022 (the bill). The Urban Development Institute of Australia Queensland (the Institute) appreciates this opportunity and acknowledges the improvements the government has sought in the Queensland building area.

The development industry is a major contributor to the Queensland economy. As the third largest industry of employment within the state, it directly employs 10 percent of the Queensland workforce, and indirectly supports a further 13 percent. Underlining its importance to the state's economy, the development industry directly contributed $26 billion to the Queensland economy in 2017, or 8 percent of Queensland's GSP, and a further $35 billion through indirect economic impacts (11 percent of GSP).[1]

We also point to the significant challenge the community as a whole and the property industry in particular faces in meeting the challenge in providing affordable homes to meet the growing population. Using South East Queensland as an example, the South East Queensland Regional Plan 2017 (*ShapingSEQ*) sets the benchmark of providing 793,700 homes for a population growth of 1,886,600 between 2016 and 2041. In the present context of very low rental vacancy rates, rapidly rising home prices, inadequate land supplies, and material and labour supply constraints the industry requires a supportive legislative framework and an agile property industry working in concert with government to achieve affordable housing.

In regard to the bill, the Institute wishes to provide some comments on the 'ban the banners' and head contractor licensing elements.

Head contractor licensing

The Institute supports retaining the head contractor licensing exemption and considers only a simple extension of the exemption should be provided at this stage. The Institute considers that it

[1] Urbis, The Contribution of The Development Industry to Queensland, March 2018

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is premature to be creating a new regulatory mechanism while the developer licensing review is not complete given the commonality of subject matter and industry participants.

The Institute is concerned the proposed reinstatement of the exemption with a delegated power to create future regulation which is broadly framed, is effectively the same as repealing the exemption. Regulation referred to in the bill's explanatory notes raises significant uncertainty for the industry. Removal of the exemption in any uncertain way can significantly and detrimentally impact the commercial and retail (including hospitality) development sectors.

To illustrate this impact further, the Institute raises the following:

- the proposed regulation could add an additional layer of regulatory exclusion red tape and cost with no tangible benefit to the community
- additional licensing and compliance activity required could significantly hinder business activity in Queensland
- it is not practical (or cost effective) for a single head contractor to hold all the relevant licences in all relevant classes which may be necessary and if the diverse licenses are obtained, could increase the potential for sub-standard work as they could start carrying out work in areas they do not have long-term specialised expertise in. For example, civil contractors for works such as for (water reticulation, sewerage, stormwater, roads etc) are covered by professional engineering requirements and indemnities but commonly involve some minor component of building works (for example – bus shelter, park shelter etc). These contractors rely on the head contractor exemption when they obtain an appropriately licensed subcontractor for these works. If the head contractor licensing exemption is removed either all civil contractors will need to be licensed (and meet all relevant licensing requirements) or those works will be included in other duplicating contracts. Contract duplication is particularly concerning as it is likely to increase costs, impact site management including work health and safety (given the works are often carried out contemporaneously on a single construction site), and cause delays (given the building work may not be able to be commenced until the civil site had reached practical completion)
- commercial and retail building owners (such as landlords) commonly enter into agreements for lease and leases in which they agree to procure building work and rely on the head contractor exemption. Examples includes office, retail, and hospitality fit outs, sometimes at considerable cost, to suit the tenant's individual requirements. They engage licensed subcontractors to do so (and in various licensing classes). The removal of the head contractor licensing exemption could result in the majority (if not all) of landlords in Queensland requiring to be licensed. Many owners also hold their properties in a multitude of corporate entities meaning that each one would need to be licensed. Some entities would be completely unable to qualify – for example, trustees of self-managed super funds are likely prohibited under their relevant governing legislation
- the changes could also affect commercial development models that commonly enter into development agreements (including with government entities) to procure the project building work, and rely on the head contractor exemption. Examples include large scale health and knowledge precincts. The works involve the parties subcontracting works to an appropriately qualified contractor (for example a large scale builder). The project leader

has no intention of carrying out the building work. The removal of the head contractor licensing exemption is likely to result in the majority (if not all) commercial developers in Queensland requiring to be licensed. These entities usually utilise special purpose vehicles (separate companies and trusts for example) to implement each development, and many of these projects are extremely critical to Queensland's economy often being multi-million or billion dollar projects

- the removal of the regulation making power (clause 67(2) of the bill) is critical to provide certainty for all industry parties involved in the property development process (e.g. financiers, investors, occupiers, operators in their contractual arrangements) and ensure that projects are able to progress
- the proposed bill does not define what constitutes complex projects or high-risk work that impacts on safety and what criteria is used to deem the exemption no longer applicable. Leaving those parameters to either further regulatory definition or exercise of a delegate's discretion is unacceptable. It will not preserve flexibility but is likely to lead to uncertainty for investment and piecemeal regulation. It will be difficult to define a common criteria for "complex" or high risk work – any work can potentially fall into these categories regardless of dollar value or size of a project; it is also unclear what expertise is required to determine these issues and whether the QBCC or its officers (as a delegate) will have a level of expertise to assess what complex projects involve, the nature of such projects and their various components (large scale projects are not only about construction) and as to funding arrangements. Safety issues should be addressed in engagement of licensed contractors and are not determined by the nature of the principal
- a case by case approach will create inconsistency and opaque regulatory thresholds for entities undertaking projects requiring significant investment and undermine certainty for lenders
- there is no evidence of lack of management capacity in the procurement of works for complex projects especially given most principals engage expert development and project managers for that specific purpose in development of this nature
- requiring licences to be held with the purpose of invoking minimum financial requirements for owners and developers that contract works is not going resolve the concerns expressed, and will simply increase costs for those entities involved in significant projects.
- Capacity to deliver the works is not a relevant factor as delivery risk is allocated to the contractors who do have the expertise. As such, high risk work is already undertaken by entities with financial capacity and a licensing overlay is not justified. Entities without capacity or funding do not undertake the type of works that may be potentially considered to be high risk. Funding structures reflect the wider commercial and legal context that owners and developers operate in. For significant projects these structures regulate financial risk. Imposing an additional licensing overlay will therefore not add any protection in the case of the majority of entities that procure complex works but will add barriers in terms of additional costs for all participants and hurdles for a range of owners and developers that already use licensed contractors to provide delivery capacity and expertise
- Contractor licensing should not impose additional financial thresholds for non-contractor parties to conduct their normal business activities, which are typically wider than just

construction, when relevant works will still be undertaken by fully licensed contractors. It is an inappropriate regulatory ambit to exclude entities and persons from procuring work by licensed contractors who can fund works under transparent and committed arrangements

- Narrowing the scope to "high risk work" limits the parameters for consultation on a proposed regulation but does not acknowledge that the requirement for the licence to be held may be inappropriate to the nature of the work (i.e. cost or scope of development). "High risk" may be widely interpreted.

In general, the Institute considers many issues will arise from permitting the exemption to be dissipated in regulation. The Institute reiterates that it is premature to be creating a new regulatory mechanism when the developer licensing review is not complete and given the commonality of subject matter and industry participants.

'Ban the banners'

The Institute accepts the proposed extension and clarification of the 'ban the banners' controls. For context, the covenants and restrictions have developed over a long period in response to homebuyers wish to protect and guide their new communities to an attractive urban outcome. Estate developers responded and sympathised with this community wish, noting the substantial financial investment that homebuyers make to achieve home ownership.

The covenants bring beneficial aesthetic outcomes however can also feel restrictive to some. The restrictions remain important and are used in many but not all estates without concern. At their best they judiciously curate desirable architectural outcomes, principally at critical locations such as road junctions and obvious corners without significantly restricting homebuyer wishes.

The Institute acknowledges enhanced environmentally sustainable outcomes are needed as we move forward and provides the EnviroDevelopment programme that encourages and rewards projects that achieve higher environmental standards. Notably, some of these projects use restrictions to ensure improved environmental outcomes. Covenants remain an important urban tool and the Institute is accepting of a state limit to what these may control.

Conclusion

Thank you for the opportunity to comment, should you have any wish to clarify or discuss this matter please contact Manager of Policy, Martin Zaltron [redacted].

Yours sincerely,
Urban Development Institute of Australia Queensland

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Chief Executive Officer