Economic Development Queensland and Other Legislation Amendment Bill 2024

Submission by
South East Queensland Community Alliance (SEQCA)

11 April 2023

SEQCA submission on the EDQ Amendment Bill

This submission has been prepared by the Southeast Queensland Community Alliance (SEQCA), a not-for-profit umbrella organisation formed by planning and environmental advocacy groups based across SEQ. Further information about SEQCA is available at https://seqalliance.org/

General comments /Introduction

The EDQ Amendment Bill, as currently drafted, includes much stronger powers for EDQ, including power to resume land and pass that land on to developers to increase housing supply – with or without additional supply of social and affordable housing.

We are not absolutely opposed to strong land consolidation rules BUT, as drafted, this legislation creates huge scope for unanticipated, arbitrary, partisan, or capricious outcomes – it opens the door to behind the scenes lobbying by the development industry and offers no checks or balances to reduce the likelihood these activities will occur.

It also fails to guarantee the actual delivery of increased social and affordable housing and offers nothing in the way of improved resilience, reduced carbon impacts and improved nature positive outcomes for the built environment.

In this submission we make recommendations as to how the proposed legislation can be improved to prevent abuse and deliver the outcomes we all want to see in the built environment. In summary, our submissions relate to four main themes:

Expand the objects to embrace good planning outcomes

The days when economic development was the only rationale for planning and development (if it ever was) are long past. Land is a commodity in limited supply and the built environment affects the liveability and sustainability of everyone in the community. These important realities need to be reflected in the objects of the Act. Let's use this review of the Act to enshrine the goals we as a community really want to achieve – social and affordable housing; improved climate resilience, reduced carbon emissions, enhanced liveability and nature positive outcomes integrated into the built environment. The commitment to these objectives shouldn't stop at s 3 – they need to be reflected in the content of urban renewal frameworks and development conditions.

Consistency with other planning instruments

Urban renewal frameworks need, at the very least, to be consistent with the relevant PDA development scheme, the regional plan for the area and the Housing Strategy of the relevant local government. As with these instruments, a more transparent and consultative preparation process is required.

Social and affordable housing

We need to see a genuine commitment to timely, guaranteed delivery of affordable AND social housing within the boundaries of the same PDA as the urban renewal area. There needs to be absolutely NO wriggle room to postpone or substitute on this outcome. We need transparent targets, continuous monitoring and regular reporting to the community on progress in implementing this and the other objectives of this Act. These measures will help ensure the Act's objectives are actually implemented and enforced in a timely fashion.

Community representation

This Act is about development for community purposes – so let's guarantee some non-aligned and community-based representation on the Economic Development Board.

Our more detailed submissions based on these themes are below.

Time for consultation

We note the duration and timing of the period for public consultation on this Bill has constrained our ability to consider this Bill in detail.

Aims, objectives and definitions

Development for community purposes is not defined in the Bill or the Act – for the sake of clarity, please include a definition.

Diverse housing is a very broad concept – essentially it seems to mean anything that will increase housing supply – so why not define it this way?

We object to the inclusion of affordable and social housing as an optional extra in draft s.3(c) ("including, for example"). Housing supply is a commercial commodity – the private market will supply diverse housing if it is profitable to do so and not otherwise. Interventions by government to secure additional, profitable housing supply will simply skew the market at the expense of taxpayers and residents in urban renewal areas. Therefore, the measures envisioned in the Bill should only be used to remedy a market failure – social and affordable housing being the primary example. This being the case, proposed amended s 3(c) should be re-drafted to read "the provision of social and affordable housing with or without additional (diverse) housing supply".

As a society it is imperative that future development provides increased resilience to extreme weather events; deep reductions in our carbon footprint; enhanced liveability and improved outcomes for nature. There is wide community agreement about these objectives and multiple cross cutting advantages to be realised by securing them. All measures which influence the future design of the built environment need to embrace and deliver on these core objectives – including new legislation. It is no longer adequate to include a vague reference to "Seeking the achievement of ecological sustainability". Any proposed new legislation should specifically enshrine these new imperatives and look to the future – not back to notional principles that have manifestly failed to deliver enhanced environmental outcomes in the past.

To overcome the glaring deficit in this Bill – and to render it a timely, ambitious, and progressive legislative reform – as befits the work of EDQ – we recommend a new s 3(2) that states: "Development facilitated by this Act will incorporate measures to improve climate resilience, reduce carbon emissions, enhance liveability and integrate nature positive outcomes into the built environment."

We note the definition of affordable housing (draft s7(b)) is deferred to proposed regulations that are currently unavailable. This definition needs to be clarified and, preferably, be enshrined in the legislation as a standalone definition that is understandable without cross-reference to regulations.

Place renewal areas and renewal area frameworks – proposed new ch 3, Part 4A

We understand the purpose of the proposed new power to declare a place renewal area over land within or associated with a PDA is to give effect to a State interest (draft 104AC). Once a place renewal area has been declared and a renewal framework published, properties within the place renewal area may be compulsorily acquired in accordance with cl 14/s 17 (about which see our comments below). These are significant powers and we are concerned that a lack of adequate checks and balances opens up these processes to abuse. We are particularly concerned about the following proposed sections:

S 104AC(4) – Prior to declaring a place renewal area, the MEDQ "need not consult with any other person" [other than the relevant local government].

S 104AH (2) – The place renewal framework for a place renewal area must be consistent with the main purpose of the Act – but need not be consistent with the development scheme for the PDA. This is concerning because the ONLY opportunity for the public to contribute to planning in a PDA is in relation to the making of the PDA development scheme. We also note there is no obligation to ensure consistency with the relevant regional plan and local government housing supply statements (in SEQ). This further undermines the transparency and efficiency of the planning process and needs to be remedied.

To facilitate the imposition of conditions (see ss 88 /88A), the place renewal framework must be required to include measures /actions or benchmarks for improving climate resilience, reducing carbon emissions, enhancing liveability and integrating nature positive outcomes into the built environment. These objectives should likewise be included in all new and existing planning instruments for PDAs.

S 104AH(3) – The place renewal framework "*may* identify actions that MEDQ proposes to take" … If there is to be any accountability to the public or the Board, this section needs to be revised to state "must identify all the actions the MEDQ proposes to take".

S 104AI / s104AN – "Before making the place renewal framework the MEDQ must consult in *a way it considers appropriate*, with … another person or entity" [likely to be affected]. We recommend specific public consultation requirements are laid out including a detailed method for notifying the whole community and a minimum consultation period inviting submissions. Place renewal frameworks are most likely to be applied in existing built environments – it is imperative the community is guaranteed some form of consultation.

S 104AL – Duration of place renewal framework – this should include a statutory end date /maximum duration.

S 122 AA – This section relates to Housing Agreements which may allow a developer to supply social or affordable housing in lieu of making a payment for social and affordable housing. Unlike proposed s.88A, there is no expectation that housing will be located within the same LGA as the PDA. This makes a mockery of the state's goal of providing social and affordable housing in accessible locations. We recommend this section is amended to provide the improved stipulation we have suggested below for s 88A(2) (that social or affordable housing will be supplied within the boundaries of the same PDA).

Acquisition of land – proposed new ch 2, pt 3, div 3A

We understand the Bill proposes to give the MEDQ new powers to compulsorily acquire land in order to give effect to place renewal frameworks (proposed s 20A). Previously, the MEDQ was required, for the most part, to carry out its more limited functions on a commercial basis (s 15 of the Act). We are concerned to protect the legitimate interests of property owners, to prevent any abuse of this process for ulterior purposes and to ensure any use of this process leads to the speedy delivery of improved development outcomes including the actual provision of social and affordable housing.

Our specific comments are:

S 15 – We recommend retaining the existing wording of s 15 – that the MEDQ must, to the extent practicable, carry out its functions on a commercial basis.

S 20A(2)(b) – MEDQ may only take land if the Minister is satisfied the taking of the land is in the public interest. Can we have some clarification on what this term actually means, please? We suggest the clause be re-drafted to state: "the Minister is satisfied the taking of the land is consistent with an action stated in the renewal area framework; satisfies the aims and objectives of the place renewal area and the PDA development scheme and is consistent with the relevant regional plan and the local government's housing statement or strategy. It must also ensure the objectives stated in s 3 of this Act [including our proposed s 3(2)] will be met."

S 20A(4) – If the taking of the land is for conferring rights or interests on another entity, MEDQ may only take the land if "reasonable steps have been taken to obtain the agreement of the owner". What constitutes "reasonable steps" needs to be spelt out in more detail here. Owners must be advised in advance of the prospect MEDQ may act to resume their land and be given a chance to negotiate a sale directly with the third party to whom rights may be conferred. Owners should be offered free assistance to negotiate on equal terms (including transparent information about a fair sale price) with developers who will be conferred the rights to develop the land. MEDQ should be transparently helping to broker a fair agreement, not simply lining up on the side of developers.

S 20E – MEDQ has power to use, lease or dispose of land: There should be a maximum time frame for completing this task to prevent land holding /speculation – the overall purpose of this power is to ensure ACTUAL DELIVERY of improved development outcomes in a speedy fashion (given current housing shortages). Land should NOT be acquired if transfer and development are not ready to proceed imminently.

S 20H/I – Notice of intention to dispose of land that is not required. As above, land should only be taken when development is ready to proceed imminently. If, in the exceptional case, land is not developed within 7 years, the entity should be required to offer the land to the previous owner – or any other prospective purchaser - AT THE SAME PRICE (OR LOWER) GIVEN TO THE OWNER AT THE TIME OF SALE. Developers should NOT be financially rewarded for postponing the development of land compulsorily acquired under this Part. Land holding and land speculation activities have NO legitimate role in a scheme which rests on the compulsory acquisition of land.

PDAs and PDA development conditions (s 88)

With respect to the declaration of a PDA, in addition to the matters required in the proposed amendment to s 34(2) (cl 19), the impacted local government and community should be consulted – including an opportunity to make submissions - prior to the declaration of a PDA being made. After completing public consultation, the Minister administering the Planning Act should be required to

prepare a report summarising any feedback from the community and local government(s) consulted; assessing whether the proposed development can reasonably be delivered under the local planning scheme mechanisms provided for in the Planning Act and if not, why not; and assessing the advantages and disadvantages of proceeding under the ED Act as opposed to the Planning Act. We need to improve the quality and timeliness of development in PDAs. Engaging the community in the process at an early stage will help prevent delays, provide an opportunity for better responding to community needs and encourage the community to "own" the outcomes – including taking an interest in the timely delivery of new housing supply.

Cl 28 – Payments in lieu of social housing. Developers should NOT be allowed to make a payment to MEDQ in lieu of providing social and affordable housing (proposed s 88 /88A). Experience with environmental offsets demonstrates the opportunity to make payments in lieu of providing desired environmental outcomes leads to extended delays and additional bureaucracy which frustrates the timely achievement of statutory objectives. We note also, proposed s 88A only states MEDQ "may" choose to provide social and affordable housing in the same LGA. We submit MEDQ "MUST" provide social and affordable housing within the boundary of the same PDA.

Developers who wish to benefit from this taxpayer funded, government facilitated, development /land acquisition and transfer process MUST be prepared to develop both social AND affordable housing on the development site OR donate social and affordable housing at an alternative site in the same LGA as the PDA PRIOR TO initiating the land acquisition /transfer or development process. We submit there is NO SOCIAL LICENCE for these developers unless this essential requirement is in place.

We note the proposed amendments fail to include provision for identifying specific targets for affordable and social housing supply (or any other matter) and do not include any monitoring or reporting measures to ensure timely delivery of new affordable and social housing. Given the precedent set by the SEQ regional plan, this is inexcusable and is further evidence of a lack of any genuine commitment to actually – and transparently - delivering on these objectives. This matter needs to be addressed as a matter of high priority.

We also believe the amended Act needs to include a mechanism to revise existing PDA development schemes to include social and affordable housing requirements – and other requirements addressing the proposed revised objectives. If such measures are already included in the PDA development scheme, additional levers are required to ensure the envisaged supply is built and delivered in a more timely fashion.

Cl 28 – Content of development scheme. Include in s 57(3)/ 58 "provide for requirements relating to the achievement of objectives stated in s 3 of this Act" or "incorporate measures to improve climate resilience, reduce carbon emissions, enhance liveability and integrate nature positive outcomes into the built environment."

CL 34 Amendment of s 87 (matters to be considered in deciding a development application). This section should include a requirement on decision-makers to consider "measures proposed to improve climate resilience, reduce carbon emissions, enhance liveability and integrate nature positive outcomes into the built environment".

Cl 35 Amendment of s 88 (PDA development conditions). This section should include a sub-section g allowing development conditions which relate to measures to improve climate resilience, reduce carbon emissions, enhance liveability and integrate nature positive outcomes into the built environment in accordance with the development scheme.

Membership of the EDQ board (Cl 50)

To enhance community accountability and transparency, there should be representation of the community's interests in the membership of the EDQ board (proposed amendment to s 132). The Act should guarantee three positions on the board – one for a member representing the social and affordable housing sector; another for a member representing environmental interests and another for a member representing communities that already host one or more PDAs. The social and affordable housing representative and the environmental representative should be selected from persons nominated by registered, not-for-profit organisations actively involved in these issues in Queensland.

We understand the existing Act includes measures for declaring a conflict of interest on any particular decision (s 135). We remain concerned, however, that Board members may, more broadly, reflect and be unduly disposed to the interests of the development sector. This makes it all the more important a diversity of non-aligned interests are included in membership of the Board.

Reporting and accountability (Part 5)

We understand the Board must give the Minister a quarterly report on MEDQ's operations and prepare an annual report and strategic plan that will be made publicly available. We urge the Minister to narrowly define the scope for deleting information that is commercially sensitive (s 32A(1) and 32L(2). The Bill should define what information in a strategic plan will constitute information "that may have an adverse effect on the interests of the MEDQ" (s 32L(2)).