Queensland Law Society

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Office of the President

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Our ref: WD P&E

The Hon Cameron Dick
Treasurer, Minister for Infrastructure and Planning
c/- Planning Group
Queensland Treasury
GPO Box 611
BRISBANE QLD 4001

By email: [redacted]

Dear Treasurer

Planning initiatives to support economic recovery – consultation on proposed amendments to the Development Assessment Rules, Minister's Guidelines and Rules and *Planning Regulation 2017*

Thank you for the opportunity to provide feedback on the proposed planning initiatives to support the State's economic recovery following the COVID-19 pandemic.

The initiatives include proposed changes to the Development Assessment Rules (**DA Rules**), Minister's Guidelines and Rules (**MGR**) and the *Planning Regulation 2017* (**Regulation**).

The Queensland Law Society (**QLS**) appreciates the opportunity to participate in consultation on these important proposals.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Planning and Environmental Law Committee, whose members have substantial expertise in this area.

Development Assessment Rules

It is important for the community and proponents of developments that there be a clear and certain process for development assessments in place and the proposed changes to the DA Rules will generally provide for this.

The proposed changes to the DA Rules seem to be a reasonable response in circumstances where many local 'hard copy' papers have closed.

It may be that, over time, alternative local hard copy papers emerge so QLS supports the approach that if there is a local hardcopy newspaper in the locality, the advertising is to appear in that publication. Our members firmly believe that advertising in a local paper (if available) is the best form of notification.

The optional process proposed where there is no hard copy local paper will most likely lead to only industry professionals and those with a particular interest in planning matters being aware of applications, rather than general residents of the area.

However, we acknowledge that in the absence of a local hardcopy paper, it is difficult to propose a sensible alternative to the current draft.

We raise the following concerns with the current proposal:

Definition of "local newspaper"

- The current definition of 'local newspaper' seems to exclude the default to the 'Courier Mail'. This needs to be amended.

  Although the Courier Mail may not be relevant to regional areas, we consider that for residents of Brisbane and proposed developments within Brisbane City, the Courier Mail is probably the most appropriate publication to advertise proposed development within Brisbane, rather than a suburban newspaper. At least, the Courier Mail should be an option available to applicants for developments within Brisbane City and it should not be excluded, as we consider it is under the current definition.

  We recommend that the definition of "local newspaper" be amended by deleting (b) in its current form and inserting:

  > *(b) is intended for a local or regional readership but for the Brisbane City Council local government area may also have a State-wide or nation-wide readership';*

Giving notice to occupiers of lots of adjoining premises

- While QLS acknowledges the policy intent of giving notice to occupiers of lots adjoining premises, this requirement will be problematic in practice.
  - First, it will be problematic to identify the adjoining occupiers, particularly for larger adjoining properties that have multiple lease interests. It is relatively straightforward to ascertain ownership details, but it will not be as easy to locate occupier details. A title search could be done that could show multiple registered leases, but not all leases need to be registered.
  - Second, the process in Sch 3, section 16, DA Rules is unclear. This section refers to "sending of a notice to the address of each lot or dwelling adjoining the premises". There may be multiple lots. There may be multiple dwellings on

a lot. It may not be possible to identify whether premises are, in fact, a dwelling, based on the definition of dwelling in the *Planning Regulation 2017*.

- We also consider that there is no utility in the "identified area" option. It only applies if there is no hard copy local newspaper, nor online local newspaper.

Minister's Guidelines and Rules

We support the proposed streamlining of the Ministerial Infrastructure Designation and Local Government Infrastructure Designation processes.

However, the redrafted provisions need further review to correct missing links in the processes, to insert timeframes, to remove references to things that no longer form part of the processes, and to correct cross referencing errors.

Planning Regulation 2017

General comments

The detail of the transitional provisions will be important. For example, will it reflect the current exemption certificate under the *Planning Act 2016* (**PA**) (see sections 46(8) to (11))?

If a new use has started as accepted development or code assessable development in reliance on these temporary measures, we query what happens at the end of the 12 month period.

For example, if a Material Change of Use (**MCU**) is covered by Proposal 1 or building work under Proposal 3, does this process merely delay the ultimate requirement for an applicant to go through a formal development application process at a later stage? If so, what is the consequence if the use is (or becomes) unviable in a commercial sense?

A centre may potentially have a short period of vibrancy under the temporary measures but be blighted when the temporary measures cease. If this occurs:

- What happens with infrastructure charges that are not payable for a temporary accepted development use which reverts to assessable development and would ordinarily be levied on an approved development application?
- Would a local government face significant discretionary arguments against the taking of enforcement action that could curtail that action for temporary lawful uses that become unlawful uses after the temporary measures expire?

In addition, there may be some mechanics about the 'opt in' for local governments.

Notice on the website of the local government and local government minutes may not be sufficient, as most stakeholders will look to the planning scheme to work out land use rights and community expectations.

We suggest that consideration be given to adding a notation on the planning scheme if an 'opt-in' decision is made.

Proposal 1: A planning approval is not needed for a change in tenancy within an existing building, if the business is expected in that zone and only minor building work will occur.

Potential consequences of the proposal

The potentially more contentious use is 'Shop' which in more modern planning schemes includes a 'Supermarket'.

Generally, this proposal may be workable in a 'Centre zone' but we are aware of planning schemes that define what a Centre zone is, and a Mixed Use Zone, is not included.

A new supermarket (even within an existing building) may have a number of impacts (e.g. traffic, amenity, parking) and can also impact on the defined centres hierarchy within a planning scheme.

If a Shop use is to remain as potentially accepted development, it may be preferable to say 'Shop (excluding a Supermarket) or 'Shop (excluding a Supermarket greater than 250m^2 GFA).

In addition to the "centre zone" issues above, there is a concern that "industry zones" may be impacted by, for example:

- premises approved for industry uses being used instead for non-industry uses e.g. offices. An office in an industrial area is acceptable when ancillary to an industrial use, however, an office building in an industrial area is likely to introduce non-industrial traffic into an industrial area;
- premises approved for industry uses being used for non-industrial uses e.g. food and drink outlets and indoor sport and recreation (again, incompatible uses being collocated, with the potential for reverse amenity impacts);
- using well located, and often scarce, industrial zoned land for uses that have no locational requirements.

Reference to "operation hours"

The reference to "operation hours" in the detail of Proposal 1 is very subjective. This is of concern because determining whether assessable development is triggered or not should be objectively ascertainable.

If the particular use is considered contentious by a landowner who would ordinarily wish to object, we could potentially see a rise in declaratory proceedings in the Planning and Environment Court about whether a definition is met.

The situation is even more undesirable when it may not be known whether these subjective elements are met (e.g. peak car parking) until the point in time when the use becomes operational.

In other words, an applicant may have invested significant funds in reliance on the exemption only to have it potentially taken away by a successful declaratory proceeding challenge.

The streamlining intent of the proposal is commendable but problems can arise with these types of details for those local governments who decide to 'opt-in' with this proposal.

Proposal 2 - Reduce the level of development assessment for certain businesses seeking to establish where the use is anticipated in that zone.

For Proposal 2, there are similar issues in terms of building work and its compliance with 'relevant local government planning scheme requirements'.

Because most planning schemes are performance based in nature there is likely to be debate and disagreement about whether this standard is met. The standard may not be met for an acceptable outcome but could arguably be met for a performance outcome. However, there are a number of cases in the Planning and Environment Court which show that this can be a point of contention.

Clarification is needed as to what the '*amenity provisions for the zone'* actually mean in practice. Some planning schemes may also not specify hours of operation and these may be matters that will be the subject of conditions of approval. We refer to the comments above in relation to a 'Shop' in the Mixed Use Zone.

Proposal 3 - Allow businesses to make minor expansions without planning approval.

It is important that the minor increase in GFA is clearly defined.

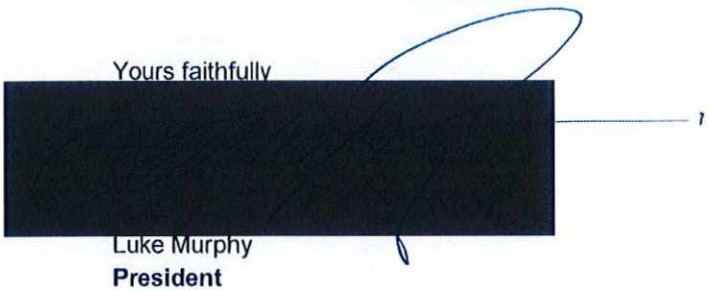
Proposal 4 - Allowing low risk uses that can support local economies as accepted development, such as home-based businesses in residential zones and farm stays in rural zones

We refer to our comments above in relation to 'Shop' and suggest that greater clarity is required.

A 'Shop' which is a supermarket in the nominated zones is probably not low risk.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Luke Murphy
President