

Economic Development (Southport PDA) Amendment Regulation 2021

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Steven Miles, Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympics Infrastructure provide this human rights certificate with respect to the *Economic Development (Southport PDA) Amendment Regulation 2021* made under the *Economic Development Act 2012* (ED Act).

In my opinion, the *Economic Development (Southport PDA) Amendment Regulation 2021*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *Economic Development (Southport PDA) Amendment Regulation 2021* (Amendment Regulation) will have the effect of amending the *Economic Development Regulation 2013* (ED Regulation) to update the Southport regulatory map (Map No. PDA 6) to reflect the inclusion of additional land (approximately 3.5 hectares) in the Priority Development Area (PDA).

Since declaration of the Southport PDA on 4 October 2013, the Gold Coast City Council (the council) has undertaken improvement works to the Broadwater Parklands. Stage 3 of the Southport Broadwater Parklands Master Plan was delivered by the council in 2015–2016 and included the creation of an additional 3.5 hectares of public parkland through reclamation of land from the Broadwater. The reclaimed land was located outside the gazetted Southport PDA boundary. The Amendment Regulation will have the effect of including this extent of reclaimed land in the PDA. The land is currently used as public parkland. The inclusion of this land in the PDA will not result in any change to its current land use.

The Amendment Regulation achieves the main purpose of the (ED Act to facilitate economic development, and development for community purposes by aligning the boundary of land that was reclaimed after the PDA was declared. This will allow for a streamlined land use planning and development assessment framework to apply.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights that are relevant to the subordinate legislation are:

- Section 19 – Freedom of movement
- Section 21 – Freedom of expression
- Section 25 – Right to privacy and reputation

- Section 31 – Right to a fair hearing

Section 19 – Freedom of movement

This section provides that every person has the right to choose where to live, and to move freely, within Queensland. This right will not be limited by a decision to amend the boundary of the PDA to include additional land.

Roads and the right to travel on roads are not altered by an amendment to the PDA boundary. The ability of a government agency to close a road or open a road will continue. Road closures and openings may continue under existing legislation (e.g. *Land Act 1994*, *Transport Infrastructure Act 1994*), or be undertaken as per the provisions of the ED Act. The obligation to issue public statutory notices (e.g. newspaper notices and gazettal notices) regarding road opening or closures is required despite the legislation used to process the opening or closure.

Existing lawful limitations on the right to access land via other land through land tenure mechanisms (right of way thoroughfares or access easements established under legislation) will also continue unaltered.

Section 21 – Freedom of expression

The ED Act establishes a process for plan making and development assessment that regulates how public submissions on amended development schemes and development applications are made and considered.

The limitation of this right is further considered below.

Section 25 – Right to privacy and reputation

The ED Act requires that the Minister for Economic Development Queensland (MEDQ) keep a register of development applications and development decisions. These registers must be made available for public viewing.

The MEDQ also receives public submissions as part of the public notification of an amended development scheme and for certain development applications.

The limitation of this right is further considered below.

Section 31 – Right to a fair hearing

Under the ED Act making a submission during public notification of a development application does not afford the submitter the right to appeal the decision on the development application.

The limitation of this right is further considered below.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

- Section 21 – Freedom of expression

The nature of the right

Every person has the right to hold and express an opinion, through speech, art, and writing (or other forms of expression) and to seek out and receive the expression of others' opinions.

The nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Upon the commencement of the Amendment Regulation, the Southport PDA development scheme will immediately apply to the reclaimed land. The PDA development scheme was prepared by the council and Economic Development Queensland (EDQ) and reflects existing use rights as public park and open space.

The ED Act regulates the manner in which a person may make a formal submission on development applications made in the PDA, and how that submission is considered in the assessment of the development proposed. The ED Act also provides for public notification of certain development applications which provides an opportunity for any interested party to make a submission on an amended development in the PDA. Submissions are taken into account in deciding the development application.

The ED Act regulates the process for public notification to ensure that the opinions of others are properly considered in the planning and development process. The ED Act does not limit the rights of individuals to express their opinion on development outside of the formal notification process under the ED Act.

Whether there are any less restrictive and reasonably available ways to achieve the purpose

Consideration has been given as to whether there is a less restrictive or more reasonable way to advance the purpose of this matter with respect to human rights. In this context the purpose of the Amendment Regulation is to align the boundary of land that was reclaimed after the PDA was declared. This will allow for a streamlined land use planning and development assessment framework to apply.

The balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The ED Act requires regard be given to the main purpose of that Act, being economic development and development for community purposes (section 37(2)). The Amendment Regulation achieves the main purpose of the ED Act to facilitate economic development, and development for community purposes by aligning the boundary of land that was reclaimed after the PDA was declared. This will allow for a streamlined land use planning and development assessment framework to apply.

Given that the extent of land to be included in the PDA will continue to be used as public parkland and zoned as such, it is considered reasonable and justifiable to limit the right of an individual member of the public to be able to appeal a development assessment decision.

- Section 25 – Right to privacy and reputation

The nature of the right

A person's correspondence must not be unlawfully or arbitrarily interfered with and a person has the right to not have their reputation unlawfully attacked.

The nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Information obtained through public submissions is only used for the purposes for which it was obtained. Personal information supplied to the MEDQ, either verbally or in writing, is collected for the purpose of processing and responding to enquiries and requests for information about projects and researching the needs of communities, partners and potential customers. The MEDQ only uses personal information for this purpose. Personal information provided will be uploaded to the MEDQ's stakeholder relationship software and is consistent with the MEDQ's privacy policy.

The relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The potential limitation of information is only to the extent in which the ED Act allows.

- Section 31 – Right to a fair hearing

The nature of the right

Creating or restricting review of administrative decision making in an appeals process.

The nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The ED Act requires statutory notification of amended development schemes which provides an opportunity for interested parties to make a submission. Submissions are considered and appropriate amendments made to the development scheme to reflect the submissions. The submissions report is made publicly available.

The ED Act also provides for public notification of certain development applications which provides an opportunity for any interested party to make a submission on the proposed development. Submissions are taken into account in making a decision of the development application. Making a submission on a development allows a person to participate in planning decisions by expressing their views about a development. Making a submission on a development application does not provide for the submitter to appeal the decision on the development application.

The balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The limitation is necessary to promote efficient development in the PDA. The amendment to the PDA boundary only seeks to include 3.5 hectares of reclaimed land in the PDA. Given its location immediately adjoining the PDA's open space precinct and the consistency of the precinct with the current use of the land, it is considered that the inclusion of this land in the PDA promotes the proper and orderly planning, development, and management of the land.

The Amendment Regulation achieves the main purpose of the ED Act to facilitate economic development, and development for community purposes by aligning the boundary of land that was reclaimed after the PDA was declared. This will allow for a streamlined land use planning and development assessment framework to apply. This land is currently used as public parkland. Including it within the PDA will not result in any changes to its current use as the land will be zoned as 'PDA Open Space.'

Given the benefits of including this additional land in the PDA and that there will be no significant change in land use as a result, impacts to landholders who may be limited in their exercise to appeal a decision on a development application are considered reasonable. Decisions may still be subject to right to information and judicial review proceedings.

Conclusion

I consider that the *Economic Development (Southport PDA) Amendment Regulation 2021* is compatible with the *Human Rights Act 2019* because while it does limit, restrict or interfere with a human right, the limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

STEVEN MILES MP

Deputy Premier, Minister for State Development,
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