

Economic Development Regulation 2023

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 Olympic and Paralympic Games Infrastructure provide this human rights certificate with respect to the *Economic Development Regulation 2023* (Regulation) made under the *Economic Development Act 2012* (Economic Development Act).

In my opinion, the Regulation is compatible with the human rights protected by the *Human Rights Act 2019* (Human Rights Act). I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Regulation:

- continues in existence Priority Development Areas declared under the *Economic Development Regulation 2013* (expiring Regulation);
- continues the effect under the Economic Development Act of transitioned urban development areas (UDAs) as Priority Development Areas;
- prescribes the way a notice about a Priority Development Area development application must be placed on land;
- provides a process for approving plans of subdivision; and
- prescribes matters that an application for a temporary use licence must include.

Human Rights Issues

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

In my opinion, the human rights relevant to the Regulation are:

- Section 15 – Recognition and equality before the law
- Section 16 – Right to life
- Section 19 – Freedom of movement
- Section 21 – Freedom of expression
- Section 23 – Taking part in public life
- Section 24 – Property rights

- Section 25 – Privacy and reputation
- Section 26 – Protection of families and children
- Section 27 – Cultural rights—generally
- Section 28 – Cultural rights—Aboriginal peoples and Torres Strait Islander peoples
- Section 31 – Fair hearing

1. Continuation of existing PDAs

Sections 3 and 4 and the corresponding schedules 1 and 2 of the Regulation continue in existence Priority Development Areas brought into existence by the expiring Regulation as well as UDAs transitioned from the Urban Land Development Authority Act 2007 (repealed) and taken to be a Priority Development Area under the Economic Development Act (collectively, existing PDAs).

In general terms, establishing an area as a PDA establishes a framework to facilitate economic development and development for community purposes. The framework includes streamlined planning and development processes, which create certainty for businesses and therefore encourage investment in development projects. Economic prosperity and planning for the provision of important community infrastructure such as health, transport and education facilities are purposes consistent with a free and democratic society based on human dignity equality and freedom.

The existing PDAs and the specific reason for which each was declared are set out in Table 1 below.

Table 1	
Existing PDA	Justification for declaration
<p>Andergrove</p> <p>Declared 23 April 2010</p>	<p>The Andergrove PDA facilitates the development of an old Council depot site into a diverse and affordable residential development distinguished by its environmental values and range of housing options.</p> <p>The development creates a diverse residential neighbourhood which is affordable, sustainable, and interconnected and demonstrates best practice outcomes for water sensitive urban design, landscape design and subtropical architecture.</p>
<p>Blackwater</p> <p>Declared 30 July 2010</p>	<p>The Blackwater PDA facilitates a thriving town with a strong identity, recognised for its major role in supporting both agriculture and the Bowen Basin mining industry, and also its potential to support a more diverse economy.</p> <p>The PDA provides more affordable housing through the improved supply of residential land and a greater range of housing types to suit the needs of the Blackwater community. High quality worker accommodation is integrated within and on the edge of the town.</p>
<p>Blackwater East</p> <p>Declared 21 June 2013</p>	<p>The vision for the Blackwater East PDA builds on and extends the existing Blackwater PDA vision, providing for the delivery of residential development in a town associated with the Bowen Basin mining industry and agriculture.</p> <p>The Blackwater East PDA provides more affordable and diverse housing through the improved supply of residential land, supporting the needs of the Blackwater community.</p>

Table 1	
Existing PDA	Justification for declaration
Bowen Hills Declared 28 March 2008	The Bowen Hills PDA facilitates the development of a regionally significant mixed use urban renewal precinct that is well connected to public transport and the Brisbane CBD. The PDA provides for a diversity of housing options delivering choice and adaptability through a mix of densities, types, designs, tenures and levels of affordability that cater to a range of lifestyles, incomes and lifecycle needs.
Bowen Street Roma Declared 8 October 2010	The Bowen Street Roma PDA facilitates the provision of a new residential community with a range of housing choices, including affordable housing to address issues associated with the resources boom. The Clearview Estate is to facilitate a health-based student accommodation precinct to support the Roma Hospital.
Caloundra South Declared 28 October 2010	The Caloundra South PDA seeks to facilitate vibrant, mixed use activity centres that provide a focus for the community and offer access to retail, services, well designed civic spaces, community and cultural facilities and local employment opportunities. Once developed, the Caloundra South PDA will provide approximately 20,000 dwellings and create 15,000 jobs. Caloundra South provides a diversity of housing, including affordable and accessible housing, to cater for a variety of households and changing requirements as the community matures. The PDA also seeks to respond to emerging regional growth management issues to accommodate future population growth in the Sunshine Coast, manage growth in a sustainable way and address housing availability and affordability.
Central Queensland University Rockhampton Declared 9 December 2011	The Central Queensland University (CQU) Rockhampton PDA aims to provide opportunities for urban development on land surplus to CQU's requirements It is estimated the CQU Rockhampton PDA may eventually provide up to 1500 dwellings and accommodate community facilities, recreation and open space areas, while enhancing the university precinct.
Clinton Declared 1 April 2010	The Clinton PDA seeks to facilitate development of an infill site for diverse and affordable housing in a resource town. The PDA seeks to provide a range of housing choices to cater for the changing needs of local communities through a mix of densities, designs, house prices and tenure options to respond to lifecycle needs. The development will also assist in meeting the housing demand necessary to support the development of Gladstone's significant projects including Curtis Island LNG and Wiggins Island Coal Terminal.
Albert Street Cross River Rail Declared 14 December 2018	Development within the Albert Street Cross River Rail PDA will facilitate over station development associated with the Albert Street Cross River Rail Station. Development will maximise its location adjacent to the Albert Street Cross River Rail Station at the key city centre intersection of Albert and Mary Streets by delivering high-quality built form and public realm that contributes to a sense of arrival and creates a new landmark destination within the city centre which promotes sub-tropical design excellence. Development in the PDA could result in various scales of development ranging from a public plaza with small-scale retail, to street buildings that contain retail and commercial uses, and potentially towers above.
Boggo Road Cross River Rail Declared 2 October 2020	The Boggo Road Cross River Rail PDA facilitates the renewal and repurposing of government land holdings and assets surrounding the Boggo Road Cross River Rail Station for economic development and development for community purposes. Redevelopment will be transit orientated, enhance, and maximise established world-class health and research facilities, and reinforce its role as a globally significant innovation precinct. Development within the PDA will leverage off public infrastructure and accommodate expansion of knowledge-intensive activities, with a focus on stimulating growth in innovation and jobs in health, science and education services.

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Existing PDA	Justification for declaration
	Specifically, development within the PDA will improve connectivity and engagement between the Boggo Road precinct and the Princess Alexandra Hospital.
Roma Street Cross River Rail Declared 13 December 2019	<p>The Roma Street Cross River Rail PDA facilitates the renewal and repurposing of large government land holdings and assets surrounding the Roma Street Cross River Rail station for economic development and development for community purposes.</p> <p>The PDA will become a key economic and community hub, built around the reinvigorated Roma Street Railway Station heritage place. Extensive new public spaces and streetscape improvements will have strong connections to, and be integrated with, nearby major parklands and facilities, including the Roma Street Parkland.</p> <p>Development will be well suited to the transit-rich environment and city centre context including a potential major sport, recreation and entertainment facility which could further activate the precinct throughout the day and night.</p>
Woolloongabba Cross River Rail Declared 23 April 2010	<p>The Woolloongabba Cross River Rail PDA will create a renewed focal point for Woolloongabba and Kangaroo Point South supporting improved connections to the precinct including the new underground Cross River Rail station, the Woolloongabba busway, and the Gabba stadium. The PDA will capitalise on the opportunities presented by Brisbane2032.</p> <p>New public realm will enhance local amenity and support an outdoor, community-oriented lifestyle. As part of the public realm, a net increase in park will be provided.</p> <p>The mix of uses will be well aligned with the investment in infrastructure in the locality. Development will improve the visitor experience during events at the Gabba stadium and provide for easy community access to the Woolloongabba Cross River Rail and busway stations. Access to the area by public transport, walking and cycling will be prioritised over private vehicles.</p>
Fitzgibbon Declared 25 July 2008	<p>The Fitzgibbon PDA has been developed into a residential community that includes significant bushland area and open space, while being close to transport networks. Communities in the Fitzgibbon PDA will be diverse, safe and healthy, have access to services, jobs and learning, foster active local participation and are pleasant places to live, work and visit while enhancing the value of existing neighbourhoods.</p> <p>The Fitzgibbon PDA will become a modern, resilient and adaptable urban form that promotes connectivity, safety and accessibility whilst recognising local values and aspirations. Economic benefit is maximised in the Fitzgibbon PDA by facilitating the release of urban land, considering lifecycle costs, operational savings, long term employment opportunities, creating partnering opportunities and creating long term value.</p> <p>The Fitzgibbon PDA protects and manages natural systems, habitats and biodiversity, and promotes the innovative and efficient use and management of precious resources such as materials, water and energy to minimise impacts on climate.</p>
Greater Flagstone Declared 8 October 2010	<p>The Greater Flagstone PDA provides for the development of a large integrated urban community of about 100,000 people living in attractive, compact neighbourhoods, and provided with a wide range of facilities and services located in a network of accessible activity centres and low impact business and industry areas. Flagstone will be characterised by an extensive network of environmental and open space corridors that frame neighbourhoods and provide active transport links.</p> <p>The PDA includes North Maclean and provides for a substantial mixed industry and business area providing a wide range of services and employment opportunities to a large catchment that includes Flagstone, Yarrabilba, Greenbank Central and extensive rural residential areas.</p>
Herston Quarter	The Herston Quarter Priority Development Area facilitates the redevelopment of the existing hospital precinct into a mixed-use, health-related precinct to support

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Declared 18 November 2016	employment growth in health and knowledge industries and deliver a unique and world-class destination for Brisbane. The proposed redevelopment includes a public health facility, private hospital, aged care and retirement living, residential accommodation, childcare facilities, retail and restaurants.
Mackay Waterfront Declared 25 May 2018	The Mackay Waterfront PDA seeks to revitalise land and infrastructure within the Mackay city centre, primarily focused on facilitating the redevelopment of the waterfront along the Pioneer River and Binnington Esplanade. The redevelopment of the waterfront seeks to deliver social, liveability and economic benefits for the community.
Maroochydore City Centre Declared 19 July 2013	The Maroochydore City Centre PDA will create a new central business district for the Sunshine coast, support economic development and build much needed infrastructure. The development includes commercial, retail and high and medium density residential development, new road transport, public open space, community facilities and infrastructure. Development of the PDA presents an opportunity for the successful integration of this key strategic site into the wider city structure. It provides for new open space, pedestrian, cyclist and vehicular linkages that connect through and between the existing urban areas. This will enable the stitching together of existing disparate precincts, and over time will provide for a seamless integration of the old and the new
Moranbah Declared 30 July 2010	The Moranbah PDA aims to facilitate land for housing and other urban development. It includes sites within the existing Moranbah town as well as a large site to the west of Goonyella Road. It covers 1218 hectares and is located in the Isaac Regional Council area, approximately 200 kilometres south-west of Mackay in Central Queensland. The Moranbah PDA was declared to: <ul style="list-style-type: none"> • assist in accommodating a thriving major regional activity centre which has a key role in supporting the expansion of the Bowen Basin mining industry. • provide more affordable housing through the improved supply of residential land and a greater range of housing types to suit the needs of the Moranbah community; • assist in planned redevelopment that reinforces the Moranbah Town Centre as the heart of retail and civic activity; and • provide for high quality non-resident worker accommodation to be integrated and managed within the town.
Northshore Hamilton Declared 27 March 2008	The Northshore Hamilton PDA is a large urban renewal area that is being transformed into a vibrant, mixed-use precinct adjoining the Brisbane River and the suburb of Hamilton. Northshore Hamilton is one of Brisbane's most significant waterfront development opportunities with remarkable locational advantages, including direct access to almost 4km of Brisbane River foreshore and outstanding views of Brisbane's central business district. The PDA presents a city shaping opportunity to deliver a master planned district that is a major driver of economic, innovation, enterprise, and community activity.
Oonoonba Declared 23 April 2010	The Oonoonba PDA facilitates the redevelopment of underutilised state-owned land for a new residential community. The development aims to provide a range of housing styles and prices for home ownership and rental targeting delivery of housing affordability and diversity suited to the needs of the local Townsville community.

Table 1	
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Oxley Declared 10 August 2018	The Oxley PDA provides for the redevelopment of the former Oxley Secondary College site. The secondary college closed in 2000 and was declared surplus to government needs in 2001. The PDA facilitates the delivery of new homes and community facilities within the site while retaining significant environmental areas and delivering new open space.
Parklands Declared 1 February 2013	The Parklands PDA was declared to facilitate development of the Gold Coast 2018 Commonwealth Games Village and legacy development related to the Gold Coast Health and Knowledge Precinct. The Parklands PDA vision incorporates two components: <ul style="list-style-type: none"> • achieving the delivery of the Commonwealth Games Village for the Gold Coast 2018 Commonwealth Games; and • promoting opportunities for longer term development to occur. Permanent development will support a mix of land uses including retail, residential, community facilities, office, health care and research and technology related development, which will build on the positive relationship with the Gold Coast University Hospital, future Gold Coast Private Hospital and Griffith University.
Queen's Wharf Brisbane Declared 28 November 2014	The Queen's Wharf Brisbane PDA facilitates a significant redevelopment in the Brisbane CBD to revitalise the south-western edge of the CBD and facilitate economic development through creating a new tourism, recreation, cultural and entertainment destination for Brisbane. The redevelopment provides the opportunity for a new integrated resort development with a range of related uses including a casino, function and entertainment facilities, hotels, retail, tourist attractions, cultural, convention, residential, landings and recreation uses as well as expansive, publicly accessible public realm.
Ripley Valley Declared 8 October 2010	The Ripley Valley PDA is located in one of the largest urban growth areas in Australia. It offers opportunities for further residential growth to meet the region's affordable housing needs. It covers an area of 4680 hectares and is located approximately five kilometres south east of the Ipswich CBD and south of the Cunningham Highway. It will potentially develop into 48,750 dwellings to house a population of 131,000 people.
Southport Declared 4 October 2013	The Southport PDA as the Gold Coast CBD will be a world-class centre for employment, community services, commerce and retail, offering a diverse range of housing options and highly desirable lifestyle amenity. The PDA enables growth and diversification of economic activity and services, and encourages a diverse range of urban lifestyle opportunities that contribute to an appealing and active urban experience at Southport.
Sunshine Coast Airport Declared 28 July 2023	The Sunshine Coast Airport (SCA) PDA will provide for the implementation of a streamlined land use planning and development assessment framework to apply over the site and deliver the outcomes of the South East Queensland Regional Plan 2017 by: <ul style="list-style-type: none"> • facilitating the growth of the airport as major economic enabling infrastructure; • delivering the strategic objectives of the council's Regional Economic Strategy 2013-2033; • facilitating the diversification of land uses at the airport that are complementary to the functions of the SCA, building resilience in the SCA business; • increasing investor confidence and certainty, which will enable investment in the delivery of an expanded aerospace precinct with improved infrastructure to better position the general aviation sector for growth and development; and • attracting development and new business to the State.

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<p>Tannum Sands</p> <p>Declared 9 September 2011</p>	<p>The Tannum Sands PDA provides a range of housing designs and price points for both home ownership and rental options.</p> <p>The Tannum Sands PDA will be a new neighbourhood providing over 1500 homes for more than 3000 people.</p>
<p>The Mill at Moreton Bay</p> <p>Declared 2 September 2016</p>	<p>The Mill at Moreton Bay PDA facilitates economic development through the development of the University of the Sunshine Coast Moreton Bay campus at the former Petrie paper mill site. The PDA will include the construction of the University of the Sunshine Coast Moreton Bay campus, new health, retail, commercial and residential developments and community infrastructure.</p> <p>It also aims to deliver transport related development in the existing Petrie Town Centre and land near the Kallangur and Lawnton train stations to maximise the previous investment in the new passenger train line to Redcliffe and high frequency public transport services.</p>
<p>Tooolooa</p> <p>Declared 9 December 2011</p>	<p>The Tooolooa PDA is to provide for the redevelopment of underutilised State-owned land for residential development for affordable and diverse housing. The residential development aims to maximise the delivery of a range of housing options including designs, price points lifestyle and work opportunities through a range of tenures.</p>
<p>Toondah Harbour</p> <p>Declared 21 June 2013</p>	<p>The Toondah Harbour PDA aims to facilitate economic development through redevelopment of existing land to boost tourism and create new business opportunities and jobs while supporting existing businesses. It will provide the local community with better services and facilities. Toondah Harbour is the main point of departure and arrival for vehicular ferry and water taxi services between the mainland and North Stradbroke Island (Minjerribah) and is the 'gateway to Straddie'. The area incorporates marine activity, residential development and open space areas.</p>
<p>Toowoomba Railway Parklands</p> <p>Declared 12 December 2014</p>	<p>The Toowoomba Railway Parklands PDA aims to develop as an active, high quality, mixed density urban village which will reinforce and frame the Toowoomba CBD core area. Located north of Toowoomba's CBD it covers approximately 50 hectares. The PDA was declared at the request of Toowoomba Regional Council.</p> <p>The PDA is intended to deliver new community assets and facilities for the residents of Toowoomba; including new parkland, community spaces, as well as function and event spaces. It will also facilitate major urban renewal and redevelopment of neglected areas of the city.</p>
<p>Townsville City Waterfront</p> <p>Declared 5 September 2014</p>	<p>The Townsville City Waterfront PDA will facilitate the North Queensland Stadium, mixed-use development in the CBD, pedestrian and cycle paths along the banks of Ross Creek and a variety of public open spaces.</p> <p>The site is an important part of Townsville's inner urban area and has the potential to accommodate and create jobs for a portion of the additional 30,000 people planned to live and work in the wider CBD area by 2030. It covers 97.2 hectares of land next to Townsville's CBD.</p>
<p>Weinam Creek</p> <p>Declared 21 June 2013</p>	<p>Weinam Creek is a point of community focus and a regional Gateway to Moreton Bay and the Southern Moreton Bay Islands. Development at Weinam Creek supports the potential to stimulate tourism to the islands, improving the Southern Moreton Bay Islands economies and the wider sub regional economy. The Weinam Creek PDA facilitates the delivery of a mixed use, residential and retail based development that supports improved car parking and use of the existing ferry terminal. Development establishes a strong community identity which benefits from the Indigenous heritage, the amenity of Moreton Bay and a mixture of residential, retail, commercial and community uses.</p>
<p>Yarrabilba</p>	<p>The Yarrabilba PDA provides the development of a self-contained new town, with a strong, healthy and prosperous community, rich in social capital which provides</p>

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Declared 8 October 2010	employment, learning and diverse housing opportunities through the adoption of sustainable development principles. The PDA will provide housing for up to 50,000 people in 20,000 dwellings. The PDA facilitates development envisaged by the SEQ Regional Plan, providing a wide range of housing choices and employment opportunities, supported by community services and public transport.
Yeronga Declared 10 August 2018	The Yeronga PDA facilitates the development of State land for a range of affordable and diverse mixed-use developments. Development in the PDA will deliver a predominantly residential community complemented by a range of other compatible non-residential uses including retail, commercial and a new community facility for Yeronga. The PDA promotes housing innovation and diversity to improve housing options and address housing affordability.

In my opinion the creation of any PDA (including UDAs that are taken to be a Priority Development Area under the Economic Development Act) would have engaged (if the Human Rights Act had been in force at the time of creation) or did engage (if created after the commencement of the Human Rights Act), each of the human rights identified above. Continuing the existing PDAs in existence similarly engages those human rights for the following reasons.

- *Section 15—Recognition and equality before the law*

Urban development contributes to climate change through removal of vegetation and more intensive and emissions-producing land use. The impact of climate change is not distributed equally among the population. It disproportionately affects the very young, the very old, individuals with significant health issues and, given its effect on the environment, Aboriginal peoples and Torres Strait Islander peoples because of their traditional or customary connection to affected lands and waters.

Section 15(2), (3) and (4) of the Human Rights Act are concerned with discrimination, which means discrimination because of a relevant attribute identified in the *Anti-Discrimination Act 1991* (the Anti-Discrimination Act) or an analogous kind of discrimination. Age, impairment and racial and ethnic origin are all protected attributes for the Anti-Discrimination Act.

Continuing a PDA in existence facilitates development and therefore limits (or potentially limits) the rights stated in sections 15(2), (3) and (4) of the Human Rights Act.

- *Section 16 – Right to life*

As with section 15, the creation of a PDA engages the right to life stated in section 16 of the Human Rights Act because urban development contributes to climate change, which poses an existential threat to humanity.

- *Section 19 – Freedom of movement*

The right to freedom of movement includes the freedom to choose where to live. The creation of a PDA brings with it planning and land use implications that engage and potentially limit the ability of individuals to choose where to live.

- *Section 21 – Freedom of expression*

Section 21 of the Human Rights Act states that every person has the right to hold an opinion without interference and the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds.

Continuing the existing PDAs has the potential to limit this right because a consequence of an area being declared as a PDA is that there are limited rights of review and appeal against decisions about development applications in PDAs.

- *Section 23 – Taking part in public life*

The effect of declaring an area as a PDA is, in broad and general terms, that the planning scheme of the local government for the area within which the PDA is located ceases to apply to the PDA. Continuing the existing PDAs continues this effect and therefore limits the right stated in s 23(1) of the Human Rights Act to have the opportunity to participate in the conduct of public affairs through freely chosen representatives (i.e., local councillors).

- *Section 24 – Property rights*

Section 24(2) of the Human Rights Act states that a person must not be arbitrarily deprived of the person's property. The continuation of the existing PDAs engages this rights because the land use planning applying in PDAs limits the ways in which land within each existing PDA can be used. Although this does not amount to a total deprivation of property, it is sufficient to engage the human right because human rights jurisprudence recognises that limitations or restrictions on use and enjoyment of property can constitute limitations on the right. I consider below whether the deprivation is arbitrary.

- *Section 25 – Privacy and reputation*

Section 25(a) of the Human Rights Act states that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The Regulation potentially limits this right by restricting the ways in which landowners and occupiers can build and enjoy their homes and conduct their family life within their homes. I consider below whether the limitation on this right is unlawful or arbitrary.

- *Section 26 – Protection of families and children*

Like the right to equality before the law and the right to life, the human right stated in section 26 of the Human Rights Act is engaged by the continuation of existing PDAs because of the role urban development plays in climate change.

- *Section 27 – Cultural rights—generally*

Facilitating urban development has the potential to disrupt established communities, thereby potentially limiting the rights of individuals with a particular cultural, religious, racial or linguistic background the right to enjoy their culture, practise their religion or use their language, in community with other persons of that background.

- *Section 28 – Cultural rights—Aboriginal peoples and Torres Strait Islander peoples*

As stated above in relation to the right to recognition and equality before the law, climate change disproportionately affects the rights of Aboriginal peoples and Torres Strait Islander peoples because of its impact on the lands and waters to which they have a connection under Aboriginal tradition or Island custom.

In addition, facilitating urban development has the potential to disrupt established communities, thereby limiting the cultural rights of Aboriginal peoples and Torres Strait Islander peoples to enjoy, maintain, control, protect and develop their identity and cultural heritage, their language and their kinship ties.

- *Section 31 – Fair hearing*

Section 31 of the Human Rights Act states that a person who is charged with a criminal offence or is a party to a civil proceeding has the right to have the matter decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Continuing the existing PDAs has the potential to limit this right because a consequence of an area being declared as a PDA is that there are limited rights of review and appeal against decisions about development applications in PDAs.

2. Approving plans of subdivision

Section 6 and schedule 3 of the Regulation state the process for MEDQ to approve a plan of subdivision under s 104(2) of the Economic Development Act.

- *Section 24—Property rights*

The provisions potentially limit the right stated in section 24 of the Human Rights Act not to be arbitrarily deprived of property, because a landowner will not be able to subdivide land without following the process. I consider below whether the effects of section 6 and schedule 4 are arbitrary.

- *Sections 21 and 31—Freedom of expression and fair hearing*

The provisions also have the potential to limit the rights to freedom of expression (Human Rights Act, section 21) and fair hearing (Human Rights Act, section 31), because MEDQ has limited discretion to approve a plan of subdivision if the process stated under section 6 and schedule 3 of the Regulation is not followed.

3. Notices of PDA development application and temporary use licences

Section 5 and 7 of the Economic Development Regulation set out procedural requirements to give effect to sections 84 and 171F of the Economic Development Act. I am satisfied the provisions do not engage or limit human rights.

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

1. Continuation of existing PDAs

(a) the nature of the rights

Each of the human rights engaged by the continuation of existing PDAs is of fundamental importance to the successful functioning of a free and democratic society based on human dignity, equality and freedom.

(b) the nature of the purpose of the limitation

The purpose of limiting these rights by continuing the existing PDAs is explained above.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Continuing the existing PDAs is essential to achieve the purposes for which they were created. The land use planning undertaken for each PDA has been designed to facilitate the development vision set out in Table 1. If the existing PDAs are not continued, the areas will fall back into general planning schemes for the area that are not equipped to facilitate the envisioned outcomes.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

For the reasons stated under the preceding heading, I am satisfied there is no less restrictive and reasonably available ways to achieve the outcomes for which the existing PDAs was created.

(e) 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

Urban development is unavoidable. PDAs are chosen because they are located in areas with high development potential or because they have features that make them suitable for particular kinds of development. Identifying these areas and applying tailored planning ensures that development proceeds in an orderly manner, balancing environmental sustainability with community needs.

In relation to the limitations to the rights stated in sections 15, 16, 26 27 and 28 of the Human Rights Act associated with potential contribution to climate change, it is likely that the contribution made by urban development within each existing PDA to global climate change will be small. Further, the contribution will be managed and mitigated by considered decision making relating to development applications which takes into account relevant State Interests including environmental interests of the State.

The limitation on right of individuals to freely choose where to live is small and very unlikely to be any greater than would apply under any other planning regime. The benefits that accrue to individuals through considered land use planning, such as the ability to identify where community services and infrastructure should be located, are considerable. I therefore consider the Regulation, by continuing the existing PDAs, strikes a fair balance between protecting the right stated in section 19 of the Human Rights Act and achieving the purpose of continuing the existing PDAs.

I also consider the Regulation strikes a fair balance between protecting the right of persons who live or own property in a PDA to participate in public life through democratically elected local councillors and the objectives sought to be achieved by establishing PDAs.

PDAs serve broader economic and community considerations within the State which cannot be appropriately managed by local planning schemes.

In relation to the limitation on property rights, the right stated in section 24(2) of the Human Rights Act protects against *arbitrary* deprivation of property. In the context of human rights jurisprudence, arbitrary means capricious, unpredictable or unjust or disproportionate to a legitimate aim sought. In my opinion, any deprivation of property rights resulting from the making of the Regulation is not ‘arbitrary’ in this sense. The purpose of continuing the existing PDAs is to maintain an orderly land use planning regime specifically designed for the area and achieve the outcomes stated in Table 1. Accordingly, I consider that if the right is limited, the limitation is reasonable and demonstrably justifiable in accordance with section 13(2) of the Human Rights Act.

To the extent that the Regulation, by continuing the existing PDAs, limits the right to privacy, it must be noted that like section 24(2) of the Human Rights Act, the right stated in section 25(a) is subject to internal limitation, namely that any interference cannot be unlawful or arbitrary. The limitation in this case is lawful (being made under the authority of the Economic Development Act) and, for the reasons stated above, is not arbitrary. I am therefore satisfied that either the right is not limited at all or is limited only to the extent reasonable and demonstrably justifiable in accordance with section 13 of the Human Rights Act.

Finally, the limitations on the rights to freedom of expression and fair hearing are reasonable and demonstrably justifiable. MEDQ may require public consultation to take place in relation to PDA development applications and must consider any submission made during that process. Further, even though there is limited opportunity for merits review of MEDQ’s decisions regarding PDA development applications, persons aggrieved by those decisions will, in most cases, have the ability to seek review under the *Judicial Review Act 1991* (Judicial Review Act). In my opinion, the Regulation therefore strikes a fair balance between protection the rights stated in sections 21 and 31 of the Human Rights Act and achieving the purposes for which PDAs are declared.

2. *Approving plans of subdivision*

(a) the nature of the right

Property rights are foundational for a free and democratic society based on human dignity, equality and freedom.

The rights to freedom of expression and a fair hearing are also necessary elements of a free and democratic society. The former facilitates the development of knowledge and imagination in individuals and the ability to participate in public discourse. The latter, to the extent it concerns civil proceedings, allows for the peaceful resolution of disputes between individuals.

(b) the nature of the purpose of the limitation

The purpose of the limitation imposed by section 6 and schedule 3 of the Regulation is to create a clear and transparent process under which individuals who require MEDQ’s approval for a plan of subdivision can obtain it.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The detailed description of the process in schedule 3 clearly sets out the steps an individual must take to obtain MEDQ's approval.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

As discussed above, the right stated in section 24(2) of the Human Rights Act is the right not to be *arbitrarily* deprived of property. In my opinion, any limitation on property rights resulting from section 6 and schedule 3 is neither capricious nor unreasonable. MEDQ *must* approve the plan of subdivision if the application is correctly made and the criteria set out in schedule 3, section 2 are satisfied.

In relation to any limitation on the rights to freedom of expression and fair hearing, although MEDQ's decision is not subject to merits review, a person who is aggrieved by it will generally be able to apply for review under the Judicial Review Act.

(e) 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.

In light of the factors considered above, I am satisfied that section 6 and schedule 3 of the Regulation limit human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Human Rights Act.

Conclusion

I consider that the Economic Development Regulation is compatible with the Human Rights Act because it limits human rights only to the extent that 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,
Infrastructure, Local Government and Planning
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