

# Economic Development and Other Legislation (Waraba PDA) Amendment Regulation 2024

## 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* (HR Act), I, Grace Grace MP, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing, provide this human rights certificate with respect to the *Economic Development and Other Legislation (Waraba PDA) Amendment Regulation 2024* (Amendment Regulation) made under the *Economic Development Act 2012* (ED Act) and *Planning Act 2016* (Planning Act).

In my opinion, the Amendment Regulation, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

The Amendment Regulation amends the *Economic Development Regulation 2023* by declaring a new Waraba Priority Development Area (PDA) and including an expiry date for the relevant Interim Land Use Plan (ILUP) which is 24 months after the Amendment Regulation commences.

Additionally, the Amendment Regulation amends the *Planning Regulation 2017* (Planning Regulation), specifically the provisions at Schedule 10, Part 2A Caboolture West Interim Structure Plan (CWISP) in the Planning Regulation. The amendments facilitate the transition from the Planning Act to the ED Act for the land within the new Waraba PDA.

## Human Rights Issues

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

In my opinion, the human rights relevant to the Amendment 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 22 - peaceful assembly
- 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
- section 36 – right to education

### ***1. Declaration of the Waraba PDA and amendment of the Planning Regulation***

The Amendment Regulation declares a new Waraba PDA and includes an expiry date for the relevant ILUP which is 24 months after the Amendment Regulation commences.

The proposed PDA is identified as a major expansion area in the ShapingSEQ 2023 and is intended to provide for both housing diversity and supply, as well as land for business and industry. Initial investigations by EDQ indicate the PDA has a capacity of around 30,000 dwellings for approximately 70,000 people. The future community will have access to around 17,000 jobs associated with employment, industrial, centre and commercial land uses.

To facilitate the transition from the Planning Act to the ED Act framework on declaration of the Waraba PDA, specific amendments are required to the Planning Regulation. In summary, the proposed changes will:

- ensure that the prohibition of development within the Caboolture West Investigation Area continues to apply to development applications and development the subject of an application properly made prior to the Waraba PDA declaration, unless made exempt by 3A.
- ensure development on a state school site within the Caboolture West Growth Area remains prohibited for development applications and development the subject of an application properly made prior to the Waraba PDA declaration, unless made exempt by 3B.
- certain operational works applications outlined by 3C will remain assessable development under the Planning Regulation prior to the Waraba PDA declaration.
- ensure all applications properly made after the PDA declaration will be subject to the EDA framework exclusively.

### ***2. Identification of relevant human rights***

In my opinion the creation of the Waraba PDA will engage each of the human rights identified above.

- *Section 15 – recognition and equality before the law*

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

This right may be relevant to the Amendment Regulation because the Amendment Regulation will lead to different rules relating to development requirements applying to different parcels of land. Specifically, the Waraba PDA declaration will mean that land within the PDA boundary will now be subject to the planning and infrastructure charging framework under the ED Act, rather than adhering to the existing planning scheme and infrastructure charging

resolution set by the Planning Act. Further the amendments to the Planning Regulation, schedule 10, part 2A will continue the application of the existing requirements to certain development but with the effect that new development applications will not be subject to those requirements.

However, the different rules and requirements applying as a result of the Amendment Regulation are founded on detailed planning assessments having regard to the nature of the land and relevant planning considerations, and are not based on human characteristics, and therefore the Amendment Regulation is not discriminatory. On this basis, I am satisfied the rights under section 15 are not limited.

This right is also relevant to the Amendment Regulation because the PDA declaration will facilitate increased density of urban development on land in the PDA, compared with the current regulatory framework.

Urban development may have consequential changes to the natural physical environment of an area that contribute to climate change. Climate change and its consequences disproportionately affect:

- Aboriginal peoples and Torres Strait Islander peoples, whose traditional lands and waters are likely to be degraded and/or permanently changed;
  - young persons, whose future prospects may be limited; and
  - elderly persons and medically vulnerable persons, whose health may be adversely affected by extreme temperatures and poor air quality.
- *Section 16 – right to life*

The declaration of the Waraba PDA as a PDA will facilitate urban development in the area that may have consequential changes to the natural physical environment of an area that contribute to climate change. The right to life recognised in section 16 of the HR Act is therefore potentially engaged by the proposed declaration of the Waraba PDA.

- *Section 19 – freedom of movement*

Section 19 of the HR Act recognises that every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave Queensland and the freedom to choose where to live.

The Amendment Regulation will regulate land use within the area and therefore somewhat limit the right of individuals to choose freely 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.

The declaration of a PDA 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 22 - peaceful assembly*

Section 22(1) of the HR Act recognises the right of every person in Queensland to form a group and to assemble, the right to assemble is limited to peaceful assemblies. This right has been identified as relevant to the decision in that the proposed Waraba PDA provides for planning for communities. The requirements in the ILUP made by the MEDQ for the proposed Waraba PDA relating to the development of local centres and community facilities serves to promote assembly and free association.

- *Section 23 – taking part in public life*

Section 23(1) of the HR Act recognises the rights of all individuals in Queensland to participate, and to have the opportunity to participate, in the conduct of public affairs, either directly or through freely chosen representatives. The declaration of the Waraba PDA engages aspects of the right recognised in section 23, because:

- the review and appeal rights for development in PDAs are more limited than the review and appeal rights generally available under the Planning Act; and
- the declaration of the Waraba PDA will displace the application of the existing Moreton Bay Regional Council planning scheme, which has been approved by the elected local government representatives for the area.

- *Section 24 – property rights*

Section 24 of the HR Act recognises that people have the right to own property and must not be arbitrarily deprived of their property. *Deprivation* is interpreted broadly in the human rights context and a limitation or restriction on the enjoyment of property rights can be sufficient to engage the right. The Amendment Regulation including declaration of the Waraba PDA and amendments to the Planning Regulation will result in development in the area being regulated, limiting the ability of property owners in the area to use and enjoy their property.

- *Section 25 – privacy and reputation*

Section 25(a) of the HR 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 declaration of the Waraba PDA potentially limits this right by restricting the ways in which landowners and occupiers can build and enjoy their homes.

- *Section 26 – protection of families and children*

Section 26(2) of the HR Act recognises the right of children to be protected due to their unique vulnerabilities and the need for special protection. As stated above, the effects of climate change will be borne to a large extent by today's children and future generations.

- *Section 27 – cultural rights – generally*

Section 27 of the HR Act recognises that all persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of the same background, to enjoy their culture, declare and practise their religion and to use their language.

Declaring the Waraba PDA will facilitate urban development in the area. Disruption of existing communities is a recognised risk in any urban renewal and development stage. However, as the land comprising the Waraba PDA is largely zoned as rural and there are no sizeable residential areas that would be redeveloped, I am satisfied that the Amendment Regulation will not unreasonably limit this right. Further, the comprehensive land use planning for the PDA through the ILUP guarantees that community and cultural facilities are available for the public. These facilities encompass areas for artistic expression, social gatherings, cultural festivities, and community assistance services. By offering resources such as community centres, halls, libraries, and museums, the PDA promotes the entitlement of future community members to engage with culture and cultivate a strong sense of community.

I am therefore satisfied that cultural rights under section 27 of the HR Act area not limited by the Amendment Regulation.

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

As stated above in relation to the rights recognised in section 15 of the HR Act, the declaration of a PDA facilitates urban development, which in turn likely contributes to climate change that disproportionately affects Aboriginal peoples and Torres Strait Islander peoples.

Further, as stated above in relation to section 27 of the HR Act, urban development can disrupt established communities, affecting the ability of members of those communities to develop, maintain and protect their language, cultural identity and kinship ties. Communities of Aboriginal peoples and Torres Strait Islander peoples may be affected in this way. In particular, the Waraba PDA area is subject to a native title claim by the Kabi Kabi people. In response, the Waraba ILUP contains assessment benchmarks and other criteria requiring all new development to have regard to cultural heritage to protect and allow maintenance of a bond with the land. Further, the declaration of the PDA will have no impact to the native title claim by the Kabi Kabi people. In this respect I am satisfied that the rights under section 28 are not limited by the Amendment Regulation.

- *Section 31 – fair hearing*

Section 31 of the HR Act recognises (among other things), the right of parties to a civil proceeding to have the matter decided by a competent, impartial and independent court or tribunal following a fair and public hearing.

In relation to new development applications, there are fewer rights of review and appeal for decisions on development applications made in PDA than are generally available under the Planning Act. Accordingly, the Amendment Regulation potentially limits this right.

- *Section 36 – right to education*

Section 36 of the HR Act identifies the right for that every child has to access appropriate education and based on the person’s abilities, to further vocational education and training.

The Waraba PDA is founded on a detailed analysis of the existing school network and the future population in the area. The plan ensures land is set aside for primary and secondary schools within the urban living precinct to ensure opportunities for access to education, as well as identifies areas for communal facilities, which may include educational spaces.

I am therefore satisfied that this right is not limited by, and is promoted by, the Amendment Regulation.

### ***3. Consideration of reasonable limitations on human rights (HR Act, section 13)***

#### **(a) The nature of the rights**

The above assessment identifies a number of rights that may be engaged by the Amendment Regulation, and a potential limitation on the rights under sections 15 (equality before the law), 16 (right to life), 19 (freedom of movement), 21 (freedom of expression), 23 (taking part in public life), 24 (property rights), 25 (privacy and reputation), 26 (protection of families and children), 28 (cultural rights – Aboriginal and Torres Strait Islander peoples), and 31 (fair hearing).

The human rights engaged by the declaration of the Waraba PDA are all fundamentally important for a free and democratic society based on human dignity, equality and freedom.

#### **(b) The nature of the purpose of the limitation**

The purpose of declaring the Waraba PDA and amending the Planning Regulation is to enable the establishment of a regulatory framework governing land use planning and infrastructure requirements needed to facilitate the intention of the *ShapingSEQ 2023*. This will contribute to orderly development in south-east Queensland, including increasing housing supply at a time when there is unmet demand, and increased employment opportunities in the area.

The proposed housing typologies for the Waraba PDA will cater to changing community needs and provide affordable housing options for lower and moderate-income households. Through the ILUP land within the Waraba PDA will be protected from inconsistent development – for the investigation area precinct until future planning is undertaken; for the green space network precinct to protect environmental values; and for the infrastructure precinct to preserve land for identified infrastructure purposes including road corridors and school sites. Further, the Amendment Regulation will continue certain provisions including prohibitions regulating certain development of land under the Planning Regulation, schedule 10, part 2A.

The provision of housing and employment opportunities for residents of Queensland’s south-east, supported by properly planned growth, adequate infrastructure and protection of environmental values, is consistent with a free and democratic society based on human dignity, equality and freedom.

#### **(c) The relationship between the limitation and its purpose, including whether the limitation helps achieve the purpose**

Currently, most of the land within the proposed Waraba PDA is regulated by the CWISP given effect to by the Planning Regulation. Declaration of the Waraba PDA and application of the streamlined land use planning and infrastructure funding framework under the ED Act will operate to fully unlock the potential of the Waraba region. This approach ensures appropriate master planning to deliver diverse living options and employment opportunities as well as preserving land for future growth and protecting environmental values. Further the framework will ensure critical infrastructure is delivered in a timely and well-sequenced manner, supporting the sustainable development of the Waraba PDA in alignment with the broader *ShapingSEQ 2023* vision.

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

Amending the Planning Regulation and declaring the Waraba PDA will streamline development and approval processes, resulting in increased affordable housing support at a time when the pressure on existing housing stock in south-east Queensland is reaching almost unprecedented levels. This cannot be achieved within the same timeframe through the Moreton Bay Regional Council Planning Scheme.

Further the restrictions on certain types of development on areas within the PDA through the Amendment Regulation (supported by the ILUP which will take effect on declaration of the PDA), are required in order to protect the relevant land from inconsistent development, and any different approach would compromise achieving the protections required for these areas.

I am therefore satisfied that there is no less restrictive and reasonably available ways to achieve the outcomes sought through the Amendment Regulation.

(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

The benefits that individuals obtain from well-planned communities with appropriate infrastructure and amenity are considerable. At a time when housing supply in south-east Queensland is under severe pressure, facilitating opportunity for timely housing development, and associated economic opportunities, will benefit low and moderate income households in the south-east.

The proposed 24-month expiry period for the ILUP is considered necessary to provide sufficient time to undertake proper and orderly land use and infrastructure planning for the entirety of the PDA, however early release housing development will be able to proceed during this time. A robust infrastructure funding and delivery framework is critical to the expedited delivery of development in the PDA. On declaration of a PDA, EDQ will commence preparation of a Development Charges and Offsets Plan (DCOP) that identifies trunk infrastructure requirements for the PDA and the development charges required to fund that infrastructure. The DCOP process is underpinned by financial modelling to provide for the equitable and sustainable funding of infrastructure.

The degree to which development in the Waraba PDA will contribute to global climate change is negligible. Further, the environmental impacts of development can be mitigated by appropriate decision-making for individual development applications, that takes account of environmental factors.

The benefits gained by the public by the prescribed planning requirements (including enabling considered land use planning, protecting and enhancing matters of ecological value and safeguarding future infrastructure provision are considerable, and ensure land is protected from inconsistent development for the benefit of the broader community. In this way the Amendment Regulation strikes a fair balance between these benefits and any limitations on freedom of movement (including a freedom to choose where to live) and rights to privacy and reputation (including a right to build a family home and enjoy family life within the home).

While declaring the Waraba PDA will have the effect of displacing the local government planning scheme including as currently applied through the CWISP, it is relevant to note that members of the community were given the opportunity to make submissions in response to the proposed redesignation of the Waraba PDA land to urban footprint in the amended

*ShapingSEQ 2023*. I also consider that the Waraba PDA aligns with the broader objectives in the amended *ShapingSEQ 2023*, which benefit the entire South East Queensland region in addition to residents of the City of Moreton Bay local government area.

In relation to property rights, the right recognised in section 24(2) of the HR Act is the right not to be *arbitrarily* deprived of property. *Arbitrary* has an accepted meaning in the context of human rights law, as being something that is capricious, unjust, unreasonable or disproportionate to a legitimate aim sought to be achieved. To the extent the ability of landowners in the Waraba PDA to use and enjoy their land is restricted by the PDA declaration, I am satisfied the limitation is not arbitrary in the relevant sense because the restrictions are tailored to achieve their purpose and in this way the regulation does not exceed what is necessary to achieve orderly development of a functioning residential community.

In relation to the limitation on the enjoyment of property rights, it is also important to note that under section 78 of the ED Act, the declaration of the Waraba PDA (and the making of the ILUP) cannot prevent or further regulate an existing use of land that is currently lawful. Nor do these events require the owner or occupier of the land to change the use in future. Further there are no changes to the Planning Regulation under the Amendment Regulation that further regulate new development in the PDA.

The reduction in review and appeal rights is a necessary part of regulating development through the PDA process, because the streamlining allows development decisions to be made with fewer delays. Not only does this mean that the benefits of proposed development are realised more quickly, it also encourages developers to undertake projects as they have a higher degree of certainty.

Having weighed the potential benefits of the declaration of the Waraba PDA against relatively small limitations on human rights identified and the absence of alternative ways of achieving the purposes of supporting the amended *ShapingSEQ 2023* and facilitating the development of more affordable housing, I am satisfied that the limitations are reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

## Conclusion

In my opinion, the *Economic Development and Other Legislation (Waraba PDA) Amendment Regulation 2024* is compatible with human rights under the *Human Rights Act 2019* because they limit human rights only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the *Human Rights Act 2019*.

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