

# Economic Development (Boggo Road Cross River Rail PDA) Amendment Regulation 2020

## 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, Kate Jones, Minister for State Development, Tourism and Innovation, provide this human rights certificate with respect to the *Economic Development (Boggo Road Cross River Rail PDA) Amendment Regulation 2020* made under the *Economic Development Act 2012* (ED Act).

In my opinion, the *Economic Development (Boggo Road Cross River Rail PDA) Amendment Regulation 2020*, 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 *Cross River Rail Delivery Authority Act 2016* (CRRDA Act) provides for the Cross River Rail (CRR) Delivery Authority (Delivery Authority) to plan, carry out, promote or coordinate activities to facilitate economic development, and development for community purposes, in a CRR Priority Development Area (PDA). The ED Act provides for the Minister for Economic Development Queensland (MEDQ) to declare PDAs and provide the MEDQ certain functions and powers with respect to the PDAs.

The objective of the *Economic Development (Boggo Road Cross River Rail PDA) Amendment Regulation 2020* is to declare the Boggo Road CRR PDA to state that the expiry period for the Interim Land Use Plan (ILUP) for the PDA is 24 months.

## 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 24 – property rights
- section 25 – privacy and reputation
- section 28 – cultural rights – Aboriginal peoples and Torres Strait Islander peoples
- 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 declare a PDA.

Roads and the right to travel on roads are not altered by the declaration of a PDA. The ability of a government agency to close a road or open road will continue. If a PDA is declared, 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 proposed development schemes and development applications are made and considered.

The limitation of this right is further considered below.

### Section 24 – property rights (the right to own property and not be arbitrarily deprived of it)

Under section 20 of the CRRDA Act, the Delivery Authority has the power to take land for a CRR purpose in relation to the CRR project. The CRRDA Act defines the CRR project as including development in a CRR PDA.

The limitation of this right is further considered below.

### Section 25 - Right to privacy and reputation

The ED Act requires that the 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 a proposed 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 19 - 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 declaration of the PDA an Interim Land Use Plan (ILUP), will come into immediate effect. The ILUP has been prepared in consultation with the Brisbane City Council (the Council) and Economic Development Queensland (EDQ) and reflects existing use rights.

The ED Act requires that a development scheme be prepared to replace the ILUP. The ED Act requires statutory notification of proposed development schemes which provides an opportunity for any interested party to make a submission on the proposed development scheme. Submissions are considered and appropriate amendments made to the development scheme to reflect those submission. The submissions report is made publicly available.

The ED Act regulates the manner in which a person may make a formal submission on development applications, 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 the proposed development. 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 matter to facilitate delivery of the development surrounding a CRR Station by declaration of a CRR PDA at Boggo Road.

### *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)). This 'regard' includes consideration of the economic and community benefit to the State that may be gained by the proposed development. Noting this, it is considered reasonable and justifiable to limit the right of an individual member of the public to comment on the proposed declaration of a PDA, or be able to appeal a development assessment decision, as the greater benefits to the community

and the State must be demonstrated as part of the PDA declaration process. This process identifies a clear purpose to the limitation of the human right, and that the limitation is linked to, and necessary to achieve, the purpose of the ED Act.

The ED Act also requires consideration be given to the impact the *Planning Act 2016* (Planning Act) may have on and amendment of planning instruments under the Planning Act and development instruments under the ED Act are both subject to public notification and require the consideration of submissions, including submissions received by members of the public, by the relevant planning authority.

Excluding the decision to declare a PDA in the first place, which has been identified as reasonable and justifiable above, the public has the same ability to make representations regarding their views on proposed land use and development under the ED Act as they would currently under the Planning Act. These subsequent processes to enable public comment of a development instrument ensures that the limitation on the human right is rational, fair and balanced.

- Section 24 – Property rights

#### *The nature of the right*

The CRR project includes the carrying out of development, other than development prescribed by regulation, in a CRR PDA.

Property rights are one of the fundamental human rights and a key pillar of a free and democratic society. Within the modern parliamentary context, many laws have been made which interfere with property rights. The exposure of property rights to impingement is limited to the effect of the statute which impacts those rights. The potential to compulsorily acquire land arises from the inclusion of land in a CRR PDA enacted by section 20 of the CRRDA Act and the *Acquisition of Land Act 1967* (ALA). A person's property rights are only limited to the lawful application of the CRRDA Act and ALA.

#### *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 ability to impinge on someone's property rights arising from the CRR PDA declaration is a lawful provision that helps facilitate the purpose of CRR PDA declaration. In this instance the potential to compulsorily acquire land in a CRR PDA would be in the public interest by facilitating the delivery of the CRR project. The impact on a person's property rights is limited to the application of the CRRDA Act and the process for compensation under the ALA. The compulsory acquisition of land is not an arbitrary process but an established framework with compensation provisions to facilitate certain lawful objectives. Irrespective, the limitation is consistent with a free and democratic society as it seeks to support the growth, development and accessibility to a broader range of performing arts experiences in Brisbane to all persons 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 relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose*

The potential limitation of property rights is only to the extent in which the CRRDA Act allows. The potential limitation of the right allows the Delivery Authority to facilitate the CRR project.

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

The process and compensation provisions are outlined within the CRRDA Act and ALA and provide a framework for the implementation of compulsory acquisition. The compulsory acquisition powers are therefore limited by the statute's provisions, which provides a safeguard to the limit of impacts on a person's human rights.

*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 purpose of the limitation is to save public resources and streamline development in the CRR PDA. There are significant economic benefits to the community in the facilitation of large projects which provide not only jobs, but a more stable and diversified economy. The positive impact to the broader community must be viewed against the backdrop of both the social and economic impacts to landholders who may be potentially displaced by the exercise of the ability to compulsorily acquire land.

People's property rights are only impacted in so far as what is lawful, and safeguards are in place to ensure these impacts are limited and adequate financial compensation is received.

- 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 or CRRDA 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 proposed development schemes which provides an opportunity for interested parties to make a submission on the proposed development scheme. 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 CRR PDA. There are significant economic benefits to the community in the facilitation of large projects which provide not only jobs, but a more stable and diversified economy. The positive impact to the broader community must be viewed against the backdrop of both the social and economic impacts to landholders who may be limited in their exercise to appeal a decision on a development application. Decisions may still be subject to right to information and judicial review proceedings.

It is considered that the declaration of the CRR PDA will provide a greater good in that it:

- facilitates economic development by creating jobs in construction;
- increases investor confidence and certainty and once completed, and attracts development and new business to the State; and
- delivers community benefit to the State by facilitating integrated land-use planning for the precinct surrounding the Boggo Road CRR station, and integration between the Princess Alexandra Hospital and Boggo Road Eco Sciences Precinct.

## **Conclusion**

I consider that the *Economic Development (Boggo Road Cross River Rail PDA) Amendment Regulation 2020* 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.

**Kate Jones MP**  
Minister for State Development, Tourism and Innovation