17 April 2020

The Hon Yvette D'ath MP
Attorney General and Minister for Justice
GPO Box 149
BRISBANE QLD 4001

BY POST/EMAIL – attorney@ministerial.qld.gov.au

Dear Minister,

RE: Legislative issues arising with COVID-19

As you may be aware, the Urban Development Institute of Australia Queensland (the Institute) is the peak body for the Queensland property development industry. This industry directly employs 207, 677 people (or one in ten Queenslanders) and a further 257,962 indirectly[1] positioning us well to provide the Queensland Government with up-to-date expert advice on a range of matters which will improve our state's ability to firstly weather and then bounce back from the COVID19 crisis. This is particularly the case in respect of reforms aimed at sustaining industry employment by assisting member firms stay in business and continue with high employment rates right across the state, including in regional Queensland.

In the circumstances of the COVID-19 challenge to the community and property industry, the Institute urgently requests that that you undertake legislative changes to:

- extend the hours of operation of work sites with changes to the *Environmental Protection Act 1994* and *Local Government Act 2009* to permit safer construction site work
- permit the deferral of payment of infrastructure charges until settlement of the properties involved with change to the *Planning Act 2016* to encourage the property industry to keep investing
- extend the times for sales under the *Land Sales Act 1984* and *Body Corporate and Community Management Act 1997* to protect investments and ongoing construction activity
- postpone site rent market reviews under the *Manufactured Homes (Residential Parks) Act 2003* to avoid significant increases to the senior community at this time
- amend the *Electronic Transactions (Queensland) Act 2001* (ETA) and the *Property Law Act 1974* (Qld) to confirm such transactions and facilitate safer transactions in response to COVID-19
- minor change to the *Property Law Act 1974* to facilitate easements for infrastructure to liberate employment investment.

[1] Urbis, The Economic Contribution of the Development Industry in Queensland, 2017

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Extend the hours of operation of work sites

COVID-19 is testing all us across many communities and industries and has required many businesses and associations to become more innovative to ensure they continue to operate and keep people employed. The property industry is not exempt from this and will require assistance from the State Government and local governments across Queensland to enable us to continue operations. Keeping the property industry operating and construction sites open during COVD-19 is critical to prevent further job loss to Queenslanders and maintain levels of employment across the state.

The Institute unequivocally supports measures to protect the health and safety of our member's employees on work sites. We highlight that allowing construction sites to operate for additional hours will reduce the number of workers on site at any one time (to enhance social distancing) and allow for operators to keep people employed during this uncertain period. We also note water agencies have issues ensuring water supply for homes while arranging new connections, and these connections may be best undertaken at night for minimal interruption.

The Institute understands that building noise is regulated under the *Environmental Protection Act 1994* (the Act) and seeks these changes to increase opportunities for social distancing on work sites while managing noise impacts and keeping job-creating projects alive during the COVID-19 event. The Institute seeks an increase to working hours until 9pm on weeknights and between 8am and 5pm on Sundays and public holidays for a period of at least six months. The Institute notes that the utilisation of these extra working hours would be optional.

The Institute asks that the Department of Environment and Science (DES) urgently work with the property industry to resolve these measures by legislative changes or otherwise, to enable construction sites to operate extended hours to protect jobs. Specifically, the Institute recommends an amendment to the Act Schedule 1 (Exclusions relating to environmental nuisance or environmental harm) Part 1 (Environmental nuisance excluded from sections 440 and 440Q). The Institute recommends this approach because it would efficiently achieve the desired outcome of saving jobs in one reform without:

- requiring government to amend the *Local Government Act* to address noise standards
- prescribed under local law, nor requiring large numbers of approvals of temporary use licences from the Department of State Development, Manufacturing, Industry and Planning (DSDMIP).

In outlining the above, we note that if construction activity during particular hours for the temporary period is in Schedule 1 Part 1, it would not be classified as an environmental nuisance, and not an offence against s440Q (unlawfully contravening a noise standard). 'Noise standard' is defined in 440K as a local law or section in division 3 (default noise standard) that applies as a noise standard under s440O(3) or 440P [default noise standards]. In the Institute's opinion, this approach is consistent with that already taken in the case of some specific provisions which exclude environmental nuisance (including noise) if it is caused by an activity reducing risk to public health under the Public Health Act 2005.This acknowledges through an existing recognised manner the linkage between responsively managing noise impacts and achieving public health outcomes. This is also consistent with a temporary use licence that has been issued to extend construction work hours for a school project at Coorparoo.

For completeness we also note that construction hours may be set by a condition of a Planning Act 2016 Material Change of Use (MCU) development approval and one option is for project managers to obtain approval for a temporary use licence from DSDMIP. However, as this option is only available

for MCU approvals (not works approvals or generally individual houses) and is case by case, it represents an incomplete and uncertain solution to the problem. The recommended amendment to the Act described above would be the most expedient way to achieve an industry-wide result within the next six months. Industry leaders have identified this is the critical period in which decisions will be made about proceeding with new job-creating projects once current projects are completed. The Institute has received direct feedback from members that the current approach to extension to site hours is inefficient and frustrating. There is an urgent need for a more holistic solution as outlined in the above recommendation.

We do note that Queensland already has, in some cases, longer construction site operation hours than other states. However, in managing the impact of COVID-19 on real-world jobs, this fact has proved immaterial, as all current project delivery plans and job forecasts were developed based on current standards. With the increased need for social distancing measures which are fully supported by the Institute, project timelines are already blowing out, imperilling the commencement of any new project once the current pipeline wraps up. We further note that New South Wales announced the Environmental Planning and Assessment (COVID-19 Development – Construction Work Days) Order 2020 which extended the hours for construction sites to operate. This has allowed the property industry in New South Wales to practice safe social distancing measures while keeping construction projects progressing.

Deferral of Site Rent Reviews

We believe it would not be fair or reasonable for homeowners or park owners to undertake any Site Rent reviews this year that increased the impost on residents, and we are suggesting that some form of deferral be considered for any site rent increases.

The current legislative framework provides that a market review has to be completed within the timeframes dictated in the Form 2 Site Agreement (*Manufactured Homes (Residential Parks) Act 2003*) and cannot be deferred. Any market review carried out during these times would create undue stress on all homeowners affected. We believe that the solution is for all market reviews in calendar year 2020, not already completed and implemented, be deferred until calendar year 2021 and it replaces any other review that otherwise would be undertaken in calendar year 2021.

The Institute would also be amenable to a freeze on existing site rents this year.

Electronic Signatures / Giving of Documents:

The community and industry are having to adapt alternate practices in the face of COVID-19 to facilitate the ongoing conduct of their usual business. Currently difficulties are being experienced in:

- executing and exchanging legal documents which take the form of deeds, which include Infrastructure Agreements
- executing and lodging Survey Plans and associated land titles documents with the Department of Natural Resources, Mines and Energy (DNRME) Registry
- provision of documents under the *Manufactured Homes (Residential Parks) Act 2003*
- digital lodgement process of other legal documents

We are aware that DNRME (Registrar's Office) is considering extension of e-lodgement process moving survey plans to a digital lodgement process similar to the scanning process of other documents.

We believe could be simply addressed by confirming that the giving of any document under the Acts can be done electronically, provided that it is done in accordance with the Electronic Transactions (Queensland) Act 2001. Particularly, confirming that either a document is delivered if a link that is accessible is given to it or that evidence of downloading of the document is conclusive of delivery.

Provide certainty for infrastructure charges to be paid at the time of settlement of new property

Infrastructure charges under the *Planning Act 2016* are required for the provision of infrastructure in accordance with a Local Government Infrastructure Plan. This is an important part of our planning system that shares the cost of local infrastructure fairly. Presently infrastructure charges are required to be paid when a development occurs that puts an additional load on local infrastructure. In practice, the charges are required to be paid prior to commencement of a new use, or as final plans are checked by councils. The sealed plans are then lodged to formally create the apartments or completed allotments in the Land Titles Office of the state Department Natural Resources Mines and Energy.

The payment of infrastructure charges for new homes and land occurs at the stage of peak debt in a project. That is when the largest investment has occurred prior to returns to the project from sales the homes and land settlement. In practice, this is a period of significant risk to the project as sales can take some time after the expenditure of these infrastructure charges. This adds substantially to the cost of homes despite at this stage no impost on the infrastructure charge system has occurred as the land is not yet occupied.

The Institute requests that the payment of infrastructure charges occur when the actual sale and settlement of the property occurs. Some local governments permit this deferral of infrastructure charges. However in the main, local governments avoid this to ensure absolute certainty of receipt of the charges. The Institute recommends change to the legislation to clarify that charges can be taken at settlement or a later point and that local government can be assured of receipt of those charges.

It is recommended to change the *Planning Act 2016* to allow for this. This change will substantially assist cash flow in development projects putting download pressure on home prices without creating additional costs to local government to any significant extent. A change here would be recognised as a substantial boost to industry confidence in investment and sustaining employment.

Easement facilitation

The Institute is aware of shovel ready projects that can be commenced, but are stymied by lack of sewer access through adjoining property. The Institute considers a small action can liberate investment for very important employment at this critical time.

The Institute seeks implementation of recommendation 158, page 822 of the Property Law Review - Final Report on the *Property Law Act 1974* report (chapter 158) to insert the word 'development' into section 180(1) of the *Property Law Act*. This will broaden and clarify the scope of the section to allow development to proceed with the discretion of the court when settlement with a neighbour for an easement cannot be reached. The change would clarify that acquisition of an easement in favour of a utility agency can be obtained if it is reasonably necessary in the interest of effective use of any reasonable manner of any land. Many benefits will flow to the community from more available easements, including more affordable housing, more efficient sewer, water, and other infrastructure, reduced requirements for pumping stations, incentivised development, reduced impact on native vegetation, better integrated and coordinated infrastructure delivery leading to better connected communities. The change would also reduce impediments to projects going ahead at this critical time.

Sales difficulties with the *Land Sales Act 1984, Body Corporate and Community Management Act 1997*
In the present COVID-19 crisis we are seeing significant uncertainty and lower sales rates and take up in residential land and apartment development, (and also in retirement villages and manufactured home park homes in a different context). This is causing delays to and uncertainty for projects, investment and to homebuyers' plans.

As a consequence, sunset dates for pre-sales contracts in apartment and flat land subdivision projects are becoming concerning issues for the underwriting and financing of developments. If, there are delays in obtaining approvals, to construction or, plan sealing, the basis for projects is undermined and contractual difficulties will add to the serious complications of the COVID-19 impacts on the economy. Even projects where works have commenced may be adversely affects by site shut downs, shortages in supply chains and the inability to operate at capacity, such that previously expected completion timing ahead of sunset dates may now be jeopardised or delays may compound into subsequent stages of projects that have already been pre-sold. Lenders in particular are actively assessing the risk and viability of projects where fixed sunset dates are looming and required buffers that financers insist on are diminished by current and prospective delays in progression of development. Further, the economic impacts on the market are already being seen in sales rates and the uncertainty around job losses and wage security is affecting completion rates for current contracts, current sales rates (to sustain development) and, in a down market the ability find a replacement buyer should existing pre-sales either not complete or be terminated at a sunset date will be much harder.

As you would be aware parties to a contract for the sale of a lot in a Community Titles Scheme (CTS) (regulated by the Body Corporate and Community Management Act 1997) can now agree on their own timeframes for when the seller must give the buyer a registrable transfer (sunset date), as long as the agreed timeframe does not exceed 5.5 years from the contract date (extended from 3.5 years). If there is no sunset date specified in the contract, then a prescribed sunset date of 3.5 years will apply. Buyers have the right to terminate the contract if the registrable transfer is not supplied to them by the sunset date. A similar regime applies for non-CTS lots (i.e. a land subdivision) but the maximum sunset date is considerably shorter at 18 months from contract date under the Land Sales Act 1994. In many cases the pre-COVID slowing of markets, particularly for apartment product, had already placed pressure on development time frames – in many cases developers have had to redesign and alter product mix or yield to meet changed demand, delaying commencement of construction as amended approvals are sought and sales campaigns adjusted accordingly. COVID impacts are now an additional exacerbating factor and even in the relatively short period of disruption bring far greater adverse impacts for projects across all formats.

While we are conscious of the consumer protection purposes of both the BCCMA and the LSA, the COVID impact is an extraordinary event that has caused economy wide disruption and suspension and without fault of parties to contracts. On that basis we believe the balance between consumer protection objectives and the position of developers and those buyers who want the benefit of what they contracted for, justifies consideration of the relationship of COVID delays to sunset date impacts.

To be fair and consistent, **we recommend that a single "suspension of time" (12 months) should apply for COVID impacts to the running of current Sunset Dates where pre-sales have been entered into prior to [date of declaration of pandemic by WHO on 11 March 2020] [and the existing Sunset Date at the date of declaration of the pandemic is less than 6 months away (for the Land Sales Act – flat land) or 2 years for CTS pre-sales.** These parameters for proximity to existing sunset dates recognise the consumer protection objectives of the legislation by focusing on

those projects most objectively likely to be affected given the current understanding of the COVID impacts and likely period of at least 12 months disruption. In practice, the suspension period would not be counted in calculation of sunset dates under these Acts for relevant existing pre-sales contracts and this would push out the sunset dates for those relevant contracts by a fixed time. This approach is by analogy consistent with other recent proposed measures for COVID impacts where fixed periods of suspension or limitation on contractual rights are set for application of overarching regulation to existing contracts.

The legislative change would only apply to current contracts in place prior to the CIVID pandemic being declared as the sunset date is able to be set to a maximum of 5.5 years (for CTS) and 18 months (flat land) for future contracts. Flat land is further constrained in some ways because 18 months is a maximum and not always long enough in normal circumstances. It would also be prudent to consider extending the sunset date on LSA regulated pre-sales to 24 or 30 months for new contracts as it is likely that the COVID impact on the market and development generally will take at least 6- 12 months to fully understand and new projects (and the economic impetus they bring) will likely be constrained by uncertainty in that period as a minimum.

Generally, we believe that a minimum of 12 months will be needed to understand and see the impact of COVID work through the development industry for projects to proceed in the current climate and a suspension is necessary to avoid loss of pre-sales in that time and provide bankable certainty for new sales in this period.

Conclusion

We believe legislative change is required at this time to address arising difficulties and provide more certainty in the legislative framework. We put forward these requests believing these are very rare and unusual circumstances and seek your urgent assistance to assist the continuity of the property development industry and its employment of one in ten Queenslanders.

Should you have any wish to clarify or discuss this matter please contact me (07) 3229 1589 (kchessher-brown@udiaqld.com.au). We appreciate the collaboration that occurs between your department and the development industry.

Yours sincerely,
Urban Development Institute of Australia Queensland

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