4 September 2025

Queensland Productivity Commission
Att: Messrs [redacted]
Email: [redacted]

Dear [redacted]

Construction Productivity
Secondary Submissions

Thank you for the opportunity to discuss our submissions with you on 20 August 2025.

As requested, we provide the following submissions in respect of the suggested legislative changes. For context, these submissions ought to be read in conjunction with our earlier submissions of 2 June 2025.

A. A MANDATORY QUEENSLAND HOUSE CODE

A proposed solution to increasing construction productivity is to adopt a State based standard for basic design and siting requirements for detached housing, for example by amending QDC MP 1.1 and 1.2 to adopt the *"Queensland Housing Code"*. The intent of this approach being that the same dwelling design could be constructed in the same location on any site within Queensland. While we support that approach, we consider legislative amendment is required in order for that proposed solution to be successfully implemented.

Further to the above, while Part 1.1 and 1.2 of the *Queensland Development Code* are "mandatory parts", sections 32 and 33 of the *Building Act 1975 (Qld)* allow local planning instruments to make provision or alternative provision for matters prescribed within those parts. This allowance should not flow through to a mandatory Queensland Housing Code. Rather, any non-compliances should remain as triggering a referral agency.

B. LEGISLATIVE CHANGES

The *Planning Act* and the *Planning Regulation* require amendment to reduce procedural complexity.

Planning Act amendments

It appears the legislature never intended for local governments to regulate matters about building work regulated under the building assessment provisions by the inclusion of section 8(5) and (6) of the *Planning Act* and the Explanatory Note for that provision, where:

(a) section 8(5) and (6) prescribes:

"(5) A local planning instrument must not include a provision about building work, to the extent the building work is regulated under the building assessment provisions, unless allowed under the Building Act.

(6) To the extent a local planning instrument does not comply with subsection (5), the local
planning instrument is of no effect."

(b) the Explanatory Note for those provisions states, at pages 208-209:

"Building and other work are not material change of use, and should not be described as such, even though material changes of use can often only occur after such work has been carried out. For example:

- *A change in building set-back for a residential allotment, a change in building height, or an extension to a residential dwelling is building work, not a material change of use. ..."*
- *...*

Planning Schemes have in the past often characterised development that is in fact only building work as material change of use, either in error, or in the expectations that this allows for the regulation of an aspect of building work that is in fact regulated under the building assessment provisions, so is unavailable to the local government to regulate independently.

Characterising building work under a planning scheme as a material change of use does not turn the building work into a material change of use. The test of whether something is a material change of use is an object text under the Bill, and cannot be changed under a planning scheme.

..." (my underlining)

A workaround loophole that has observed to this limitation is by local planning schemes characterising certain aspects of building work (e.g. building height, bushfire matters, etc) as material change of use, thereby allowing them to categorise the development. This approach has been accepted by the Court.

We submit section 8 of the *Planning Act* ought to be amended by the inclusion of the following subsection (7):

(7) For the avoidance of doubt:

(a) a provision of a local planning instrument will be a provision about building work for the purposes of subsection (5) if it is a provision that does any of the things specified in section 43(1) of the Act:

(i) for building work; or

(ii) for any aspect of other development as a result of the building work necessary for, associated with, or incidental to, that other development; and

(b) a provision about building work will not comply with subsection (5) if it does any of the following:

(i) it categorises development as assessable development as a result of a failure to comply with applicable building assessment provisions under the Building Act;

(ii) it specifies a level of assessment for development as a result of a failure to comply with applicable building assessment provisions under the Building Act; or

(iii) it sets out assessment benchmarks other than as allowed under the Building Act.

This amendment would make clear what is *"a provision about building work"* as referred to in subsection (5) of section 8 of the *Planning Act*.

Planning Regulation amendments

The *Planning Regulation* ought to be amended to prescribe that, for assessable development involving a dwelling house and/or ancillary outbuildings on residential land, a building certifier will always be the prescribed assessment manager and the local government will only be a referral agency for any proposed non-compliance/s.

After a brief review of the *Regulation*, it is considered the following provisions would require amendment:

(a) Schedule 6, Part 1 to prescribe that a local categorising instrument is prohibited from stating any building work for a dwelling house and/or ancillary outbuilding on residential land is assessable development;
(b) Schedule 6, Part 2 to prescribe that a local categorising instrument is prohibited from stating any material change of use for a dwelling house and/or ancillary outbuilding on residential land is assessable development;
(c) Schedule 8, Table 1A to make clear that table does not apply to a dwelling house and/or ancillary outbuilding on residential land;
(d) Schedule 9, Part 3, Division 2 to includes the matters referred to in Schedule 8, Table 1A are referral agency matters for a dwelling house and/or ancillary outbuilding on residential land. That being, the local government becomes a referral agency for any proposed non-compliances of the local planning instrument.

Outcome of proposed amendments

Importantly, the proposed amendments to the *Planning Act* and *Planning Regulation* are only in respect of reducing regulatory complexity for development involving a dwelling house and ancillary structures on residential land.
Amendments to those provisions would result in a simplified development approval process, because it would have the effect that:

(a) a single development application would be required to be made;
(b) that development application would be made to a building certifier as the prescribed assessment manager;
(c) for any proposed non-compliances, the development application would be required to be referred to the local government for assessment and response as referral agency;
(d) there would be no circumstance where another type of application would be required for material change of use or building work of a dwelling house or associated outbuilding;
(e) some operational works, such as cut and fill not forming part of the building work (filling your back yard or a non-complying driveway) may still trigger operational works permits, or alternatively could also be prescribed in schedule 6 to be referral matters.

Such an amendment would likely significantly reduce complexity, result in faster turnaround times for the issue of development permits, significantly reduce wasted costs, and simplify the appeal process.

Potential issues with amendments

In considering the above suggested amendments, we considered that two potential issue may arise.

The **first issue** that could arise with this method is where there is an earlier development approval in existence, e.g. a plan of development (*"**POD**"*), and that development approval contains a condition that applies to a future dwelling and/or ancillary outbuilding. Homeowners should not be required to lodge change applications for such non-compliances, as such applications can be complicated, costly, and require judicial intervention. It would also not be appropriate to require homeowners to obtain *"generally in accordance"* advice from local governments as not only is there is no legislative provisions authorising such advice, there is also no appeal rights.

To resolve this issue would be to amend Schedule 9, Part 3, Division 2 to include a table to the effect that any non-compliances with the conditions of earlier development approvals for reconfiguration of a lot require referral to local government as referral agency. The local government, as referral agency, could then assess the proposal and direct the assessment manager to give the development approval subject to stated conditions. The current *Planning Act* would treat those conditions as being *"imposed"* by the local government[1] and the "inconsistent" development condition would be permitted[2] because both conditions were imposed by the *"same person"*,[3] being the local government.

To be clear, local governments would not be relinquishing authority to control as to what may be built and/or where it may be built. The above proposed method would still provide local government with the jurisdiction to assess and ultimately decide the legitimate non-compliances of proposed development. However, their regulation, assessment and decision making in respect of same would be carried out with dramatically reduced procedural complexity.

The **second issue** that could arise with this method is in respect to the imposition, inspection and enforcement of conditions imposed by the local government as the referral agency. Further regulatory burden should not be place on the private building certifier (noting our

[1] *Planning Act*, sections 56(1)(b)(i) and 63(2)(e)(iii).
[2] Subject to other requirements of the *Planning Act*, section 66(2)(b)-(c) being met.
[3] As required by *Planning Act*, section 66(2).

earlier submissions about attraction/retention issues, industry shortages, etc), and so that responsibility ought to be maintained by the local government as referral agency.

To resolve this issue amendment would be required to the *Planning Act* and *Planning Regulation* to allocate certain responsibilities and establish clear statutory roles for the local government, even though the private building certifier remains the assessment manager. For example a new section or subsection could be inserted into *Planning Act* Chapter 3 (Development Assessment), to provide that, where a private building certifier is the assessment manager for a development application for a dwelling house on residential land, and the local government is a referral agency, the local government is responsible for any imposition, inspection and enforcement of conditions imposed by it as a referral agency.

Further amendments may also be required to section 99 of the *Building Act* to include referral agency inspections (similar to section 102(1)(c) of the *Building Act*) to effectively adopt and implement these suggested changes. At the time of making this submission, we had not had the opportunity to consider these amendments in detail. We would welcome any further opportunity extended by the Commission to further consider, discuss or submit in respect of a proposed resolution to this issue.

Overall impact

The above proposed amendments would effectively make clear:

(a) the building certifier remains the sole assessment manager for building work applications in involving a dwelling house and/or ancillary structures on residential land;
(b) the local government retains control and enforcement authority over matters of local planning significant; and
(c) a better balance is achieved between private sector efficiency and public interest enforcement.

C. STATE BUILDING PORTAL

Currently, each local government is independently responsible for receiving, managing and storing development approval data and associated documentation. This decentralised system results in duplication, inefficiencies and oversight.

A centralised State Building Portal housing all development approval data and records would be highly beneficial to increasing construction productivity, because it would:

(a) **Be a centralised data base for development approvals.** A portal would eliminate the fragmentation currently caused by each local government maintaining their own systems, improve accessibility of approval records for builders, building certifiers, and other regulators, allow seamless transfer of project information across jurisdictions and during changes in project management.

(b) **Improve regulatory efficiency**. Regulators (e.g. building certifiers, local government and the QBCC) could easily access building records and other documents, which would increase construction productivity directly by expediating the regulatory process, but also indirectly by allowing for the complaint handling and the auditing process to be carried out more efficiently. The portal could also flag inconsistencies in development approval timelines, for example when footing, slab, frame and final inspections are all dated within days), thereby allowing proactive investigations and/or early intervention into possible non-compliances.

(c) **Enable data collection and policy insights.** The portal would greatly improve evidenced-based policy making, particularly in housing and urban development, because it would enable real-time State data on development approves, completions, building types, regional, and approval trends.

(d) **Enable 3rd party software integration**. Parties and stakeholders could integrate their own digital software with the portal to enable automated submission and retrieval of development approvals, certificates and other documents. Where each local government maintains data in their own elected system, it poses challenges for third party software to integrate with various platforms, creating hurdles for such automation.

(e) **Enable efficient trade licencing and accountability**. The portal could be further developed to link QBCC digital licences of trades to construction projects. This would ensure greater transparency around who has worked on each project, improve continuity of information in circumstances of builder insolvency/phoenixing, and provide fairer and more accurate resolution of complaints, warranty claims and insurance payouts.

(f) **Provide access for trades and subcontractors**. Once a project is uploaded to the portal, licensed trades could access approved plans and relevant documents to allow better management of the project and a more efficient workflow and expediate completion. That being, the portal would be a central system making critical information readily accessibly to those who need it. Currently, critical information

and documents can be difficult for trades to obtain, despite being essential for the correct execution of works.

(g) **Enable digital certificates of compliance**. Trades, engineers and competent persons would be able to upload aspect certificates directly to the portal to affirm their work, or the work they have inspected, is compliant with the approved plans. This would provide a transparent and timestamped trail of compliance declarations, enhance accountability and traceability, and provide a searchable and auditable history for regulators and insurers.

(h) **Improve regulatory oversight**. By linking individual licences to specific jobs, regulators could track where licensees are currently working, identify those who may be contributing a high number of defects, and conduct risk-based audits on high-risk individuals or regions.

(i) **Facilitate standardisation of the development approval process**. Currently, local government authorities apply inconsistent requirements, particularly around form acceptance and document lodgement. A centralised system managed by a State-level building certifier would ensure standards forms and processes are applied State-wide resulting in consistency in expectations and documentation.

In terms of costs and funding a State-based portal, each building development approval currently attracts a "document lodgement" fee required to be paid to the local government. This fee varies between approximately $60-$500 depending on the local government.

A consistent State-wide lodgement fee could fund the creation and ongoing maintenance of the portal. Based on Google AI estimates, there are approximately 162,000 building development approvals issued annually in Queensland. A flat fee of $100 per development approval would generate approximately $16.2 million per annum, thereby providing a sustainable funding base for the development and maintenance of the portal, ongoing improvements and future integrations, and customer support and user training. Where additional funding is required, subscription fees might also be a further opportunity for funding the portal.

A centralised State Building Portal would be a progressive investment that would significantly increase productivity in Queensland's building and construction sector by standardising development approvals and making it easier for industry participants to comply, regulators to enforce and local and State governments to plan and support growth.

D. FORMS

The mandatory forms are broad and could be reformed to better replicate the documentation and declaration of complying works for both persons carrying out inspections or aspects of building works. This leads to forms rarely being completed to a suitable detail and wasted resources of both the building certifier and the trades as they negotiate the context of these forms.

This reform could include the following suggestions:

(a) be in an electronic format or in a portal that could be linked both to the licence credentials of the person submitting the forms;
(b) electronic format would require all mandatory forms to be completed prior to submitting;
(c) automatically match the form to the aspect from the inspection guidelines. Exclusions need to be manually entered and explicit. Can also make it clear if the certificate covers the entire aspect or if additional aspect certificates are required for that aspect of that stage of construction;
(d) have a much more obvious declaration section that the works were undertaken in accordance with the building development approvals.

This would not only derive better productivity, but also accountability and accessibility for those such as certifiers and regulators who audit these projects.

E. ADMINISTRATIVE BURDENS

With most certification being undertaken by private building certifiers, it is important to consider that the cost needs to be proportionate to the service. Productivity benefits can be gained by reducing administrative burdens on building certifiers.

These might include removing the burden for the building certifier to sight the QBCC Home Warranty Insurance documents or the QLeave documents prior to issue of building development approvals. For some projects, it is difficult to determine if they are required or not, leading to wasted certification resources on these tasks. This also limits building development approvals from being issued prior to engagement of the builder. Having the approvals in place for the quote/tendering processes would allow more accurate quoting and less variations, leading to improved productivity. This would require a legislative change.

F. TIMEFRAME COMPLEXITIES

A number of timeframes prescribed by the legislation inhibit construction productivity.

For example, the *Building Act* prescribes a demolition/removal condition which prescribes that works must substantially commence within 2 months or the application lapses. In many cases, this creates a significant burden in the re-issue of development permits, as other permits such as road traffic permits, after hours works permits, etc are also required, can't be lodged until after a building approval for the works is obtained, and generally take more than 2 months to process, leading the building approval lapsing.

A review of the legislation ought to be considered to extend prescribed timeframes that often result in wasted resources and procedural duplication in practice.

CONCLUSION

We are grateful for the opportunity to further discuss some of the issues raised with you, and have included the above secondary submissions as requested.

Unfortunately, due to other commitments, at this stage we have been unable to provide a detailed analysis as to the requirements for reform. Accordingly, we have provided a general overview as to the general amendments required and would welcome any opportunity to extend these further.

Kind regards,

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(Director)

Jacky Timmins
(In-House Counsel)