



Submission

Queensland Productivity Commission
Construction Inquiry

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Who we are

The Australian Institute of Building Surveyors (AIBS) is recognised nationally and internationally as the peak professional body representing building surveying practitioners in Australia.

Our Mission

AIBS is committed to ensuring a safer Australia through continuous improvement and development of the profession of Building Surveying. The overarching objective of the Institute can best be summarised as follows:

To achieve the highest standard of professionalism through Professional Development, such as education pathways and training, and Advocacy in representing the profession and establishing standards.

Professional Standards

The Australian Institute of Building Surveyors (AIBS) Professional Standards Schemes for Building Surveyors operates across all states and territories and is a legislative instrument that obliges AIBS, to monitor, enforce and improve the professional standards of members under the Scheme, thereby reducing risk for consumers of professional services.

The AIBS Professional Standards Scheme upholds the professional standards of Scheme Members, who are building surveyors, and ensures that clients have access to appropriately qualified and skilled building surveyor practitioners for representation and advice.

Australian Institute of Building Surveyors – Submission Principal Contacts

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Preparation

This submission has been prepared in response to publication of the terms of reference and a request for public submissions published 24 April 2025.

Overview

As the peak body representing building surveyors in Queensland, this submission addresses issues impacting productivity observed by our members who participate in central roles to the construction sector in Queensland. Our membership within local government perform statutory functions associated with authorisation of construction and critical compliance and enforcement roles where work is undertaken outside of any authorisation. Our members in private practice are engaged in a range of roles from consulting during the design phase supporting understanding across the design team of compliance options, through to statutory engagements facilitating construction authorisation and authorisation of occupation of completed buildings.

Of the myriad things that impact productivity in the construction sector, few will otherwise appreciate a building surveyor's perspective of this problem so that we welcome the opportunity to present our unique view of this issue and how productivity breaks might be addressed. We note that this opportunity is the initial phase of the investigation and look forward to further participation in this process as an active supporter of the review.

We believe that changes in just a handful of key areas will significantly enhance productivity within the sector, particularly in relation to housing supply. These can be summarised into headlines as follows:

1. Simplification of technical infrastructure
2. Rationalisation of regulated processes
3. Rationalisation of legislation
4. Expanding programs of attraction and retention to include construction industry professionals
5. Augmentation of cross sector accountability
6. Mandate continuing professional development across the sector

There are considerable issues of uncertainty arising from the inconsistent application of technical requirements throughout Queensland as well as the regulated processes that apply in an inconsistent manner across local government areas in Queensland. There is no singular legislative reference to understand what is required in relation to construction, with overlapping requirements arising in separate Acts and subordinate instruments, many of which are difficult to locate, particularly those which arise through individual local government policy adoption.

These factors are a significant detraction from efforts to attract and retain professionals in the construction sector so that, in concert with addressing the complexity issues, there should also be an active campaign to promote the virtues of a career as a construction professional, making visible otherwise obscure professions that are central to the industry such as building surveying. If shortages of such professionals are not addressed, supply constraints will be exacerbated and over a protracted period owing to the long lead time for qualification of new entrants to these professions. It takes seven years to become qualified as a building surveyor able to work on all buildings.

There is an excessive amount of resource used in remediation of building defects stemming from a range of factors including inadequate supervision of construction work, which in turn arises from considerable difficulty in holding accountable those responsible for defective work. The capacity and efficacy of the QBCC in regulating the practitioners involved in the sector needs augmentation.

The basic skills of a person participating in the industry at entry qualification stage must be maintained throughout the career of construction industry workers and professionals. The industry is continuously evolving and particularly so as it is faced with the task of modernisation to achieve the productivity lifts needed to deliver growing demand in a constrained labour market. To support quality outcomes where defect remediation is rare, it is essential that all involved maintain their skills and knowledge.

The points raised above are supported by detailed explanation in the following section of this submission. Should the Commission require additional information or clarification of any point raised in this submission or matters related to the terms of reference to the enquiry, we would be pleased to assist.

In Detail

This section of this submission provides additional information in support of the points made in the overview. Following this, we have provided a table which responds directly to each of the points contained in the inquiry terms of reference.

Details of AIBS response to Inquiry

Simplification of technical infrastructure

The Queensland government has adopted the National Construction Code's Building Code of Australia and Plumbing Code of Australia throughout Queensland. There are variations from the National provisions of those technical requirements that are published within those documents that are specific to Queensland, so that the national code is not fully adopted in Queensland.

Additionally, Queensland Development Codes have been published with mandatory effect through legislative reference that further vary the some of the technical requirements of the National Codes and in other instances add to those requirements. Additionally, there are technical overlays that apply to Queensland that indicate areas where particular risks arise that should be regulated via technical codes – bushfire prone areas, areas subject to flooding, and the like.

The legislative arrangements in Queensland related to the establishment of technical infrastructure means that local government is able to choose if it will adopt State overlays and in so doing creates further complexity regarding the technical infrastructure that is applicable on a council by council basis. There is also an ability for local government to vary elements of the Queensland Development Codes that are applicable within each council area, effectively creating a fourth tier of technical infrastructure to be observed in any development activity.

This complexity provides multiple obstacles to productivity.

The supply of products and materials into Queensland is impacted because the extent of data and other product information necessary to confirm compliance is distinct from what must be provided in other parts of Australia. Noting that internationally, the Australian market is relatively small (Australian population less than 30 million people vs multiple countries with populations in excess of 100 million people), distinguishing Australia from international norms regarding technical regulation is a deterrent to supply, and even more so for Queensland because of further distinguishment of technical requirements from the national approach to technical regulation.

Portability of practitioner skills across jurisdictional boundaries is made less viable by the complexity of technical infrastructure in place in Queensland. This hampers the ability of otherwise

capable people from supporting disaster recovery efforts in Queensland and other business cycle related spikes in demand on a skilled workforce able to service the construction sector in Queensland.

The complexity of technical infrastructure is also a barrier to compliance and enforcement authorities who will also need to spend considerable time ensuring the particulars of what is required for each building are properly understood before undertaking any audit of practitioner performance, compliance of any structure or the like. This then reduces the coverage of work that is able to be overseen by compliance and enforcement capable bodies such that the risk of getting caught having undertaken work otherwise than in accordance is lower, with a propensity for lower levels of voluntary compliance growing as a result.

The timeframes for design and approval of developments are often also drawn out because of the complexity of technical infrastructure. Those involved in design will make best endeavours to determine what is required and design accordingly, only to find that something has been missed forcing redesign of elements to address deficiencies arising from that process. The processing of applications is also often protracted beyond expected timeframes because of unforeseen referral processes and also because of issues that arise therein which were not anticipated because of the difficulty in understanding what is required up front.

AIBS has received input to this submission from several members so that this submission is an aggregation of viewpoints of several of the aspects reported. We are particularly please to be able to provide an excellent example of how the interplay between planning and building legislation is impacting productivity that has been identified by several of our members. **Attached** is a copy of a submission from AIBS director Luke Neller through his private company, Project BA. This submission provides significant detail of the issues reported and AIBS fully supports the views expressed in that submission and repeats the calls made in that submission regarding reforms to address that issue.

Rationalisation of regulated processes

The Federal Productivity Commission's Research Paper released on 17 February 2025, recorded findings that inconsistent standards, building codes, planning approval processes, and zoning laws among the various jurisdictions results in inefficiencies, delays, increased costs and an overall reduction in the productivity of housing construction. National productivity is impacted by Queensland adopting a different approach to regulation of the sector to neighbouring Australian jurisdictions. Worse, the variability of requirements applicable within Queensland add to this problem.

The National Productivity Commission Research Paper touched upon the proposed solution to harmonise building and planning regulations to reduce administrative burdens, create a more streamlined and consistent approach to building and planning approvals by reducing unnecessary regulatory barriers, and improving coordination across jurisdictions by adoption a clear set of national standards, and thereby making it easier for developers and builders to operate across multiple jurisdictions. In addition to this, AIBS notes that this is equally compelling within Queensland – with a single approach to regulation of building work throughout Queensland being essential to then reaching national consistency in approach to regulation of the sector.

For assessable development (developments that require an authorisation before construction can commence) involving a dwelling house (residence) and/or ancillary outbuildings (sheds, carports, garages etc.) on residential land, regulations should be amended so that the appointed building certifier should be the prescribed assessment manager. In this case, the local government role should be limited to being a referral agency for any proposed non-compliance/s with town planning instruments.

This would simplify the development approval process, because it would have the effect that:

- a) for all assessable development involving dwelling houses and/or ancillary outbuildings, a single development application would be required to be made, establishing a one stop shop process of approval application;
- b) providing clearly defined roles that development applications would be made to a building certifier as the prescribed assessment manager (could be a council based building certifier or a private building certifier), and council or other jurisdictions are referral agencies only;
- c) provide a clearly defined and simplified process where any planning matters are a referral only, removing complexity arising from different applications for different non-compliances with the planning provisions;
- d) there should be no circumstance where another type of application is required, be that for material change of use or the like, provided the development proposal can be established within the town planning parameters for the locality or addressed via a referral to address matters that are not within the parameters;
- e) some operational works, such as cut and fill not forming part of the building work (filling a back yard or a non-complying driveway) may still trigger operational works permits, or alternatively could also be prescribed in schedule 6 of the Planning Regulation 2017 to be exempt development, then listed in Schedule 9 of the Planning Regulation as referral matters.

Such an amendment would not only significantly reduce complexity, it would also have flow on benefits, including preventing procedural duplication, faster turnaround times for construction authorisation, significantly reduce wasted costs associated with an uncertain process, and it would simplify the appeal process should there be a dispute about what is required.

Rationalisation of legislation and legislative reforms

Rationalisation

There are several Acts and subordinate instruments that form the totality of the system of regulation of the sector in Queensland. This creates uncertainty and difficulty in understanding ahead of embarking on a development in Queensland so that the cost of reaching an understanding that will allow a decision to be made on an informed basis to proceed is higher than it might otherwise be. There is also considerable unplanned cost that arises where requirements have not been anticipated before embarking on a development.

AIBS supports a single dedicated Building Act overseen by a dedicated Building Minister with responsibility for maintenance of the Building Act, Regulations and the policy and regulatory bodies required to implement it. Largely, this has been achieved in Queensland with few reforms needed to address existing uncertainty in how development is regulated in Queensland.

The building assessment process is defined in the Planning Act. This obliges anyone seeking to understand how the statutory processes are to be applied referencing two separate pieces of legislation to do this which is inefficient and prone to cause disputes. There should be as far as possible a single reference point to understand how to get development authorised for construction in Queensland.

Statutory building surveying roles are made more complex by requiring that all necessary planning applications are obtained and consistent with the proposed building works. The Legislation seeks to separate jurisdiction between building and planning matters through Planning Act Section 8. However, planning and building have vastly different requirements and it can be said that the

national decline of building regulatory systems is in part due to State and Territory decisions to place regulatory control with planning departments.

Members are reporting that they are utilising 80% of their time during the construction authorisation assessment stage in resolving planning matters, leaving limited time to carry out their key role in assessing building design compliance. This leads to decisions conditioning compliance, and leaving it up to trades to sort out how compliance is to be achieved during construction, rather than it being demonstrated in the design phase.

In addition, AIBS believes there is a need for a clear framework for the control of materials, products and technical standards in Queensland and for that framework to reflect if not mirror a national approach to technical regulation in Queensland.

By prescribing statutory functions of building surveyors, respect for the process is strengthened, resourcing of the function is more readily assured, and the expectations of the community and industry are managed and met. This clarity is in need of improvement in Queensland to ensure appropriate consumer outcomes can be delivered with the minimum of frustration and cost from re-work or remediation of defects.

AIBS believes a more robust enforcement scheme is central to improvement of productivity in Queensland. Currently, this is achieved by four separate bodies, local government, private building surveyors, the Queensland Building and Construction Commission and the Queensland Fire and Emergency Services. The demarcation between these entities is not sufficiently clear so that in some instances, multiple efforts are made over the same work. In other instances, no compliance or enforcement action is taken because no-one thinks it is their role to act.

Inadequate compliance and enforcement action leads to lower levels of voluntary compliance which then impacts productivity through increased rates of defective work requiring remediation and maintenance on completed buildings.

Reforms

Regulatory co-ordination is an important consideration during the pre-construction phase. The legislative framework needs to codify how planning and other legislative inputs are to relate to the process. The process of ensuring legislative inputs to the building control system must be made simple so that everyone can understand how each different requirement influences the other. This should also be consistent nationally in respect to process and the level of interaction between complementary requirements.

Regulation of practitioners in Queensland is highly complex with the numbers of distinct license categories applicable to the Queensland construction sector renowned as the most complex in Australia. Queensland has the highest number of distinct licence categories relevant to the building and construction sector. It is considered to be the most complex licensing system of all Australian jurisdictions for its careful and particularly set out prescription of work that is regulated and the licenses that permit work to be done.

There are several overlapping license categories so that consumers will often be confused about who is licensed to do the work they are seeking to have undertaken. Issues of demarcation and practicality often arise. People are often asked to perform work where they possess practical skills to do work they are not licensed to perform in order to maintain construction programs and to avoid additional costs arising from using a licensed person. Often this work is defective because whilst holding practical skills, the people doing this work do not hold the technical knowledge about the work to be performed, and errors often arise as a result.

There are often delays caused by persons providing certificates about the compliance status of work that has been undertaken without having properly been recognised by the building surveyor for a project as a 'competent person' pursuant to legislation that allows for evidence of construction conformity to be verified in this way. When such people are not accepted, builders will need to find

an alternative person who is able to be accepted and get them to inspect and verify compliance if such exists.

There is a high rate of defective work that arises from incomplete or non-compliant design in Queensland. In Queensland, it is possible for a building surveyor to accept design documentation as compliant where a person with appropriate qualifications has been involved in the preparation of the design documentation and provides a certificate attesting to the compliance of that design. This happens so often that such certificates are routinely provided to building surveyors for many elements of building work, with many building surveyors actually asking for these certificates as a means of mitigating the time it takes to assess an application. AIBS draws a link between these two facts – high rates of defect and extensive use of effective self-certification of design work.

To avoid defective work, proper accountability for design work should be established. This should take two forms. Firstly, certificates should be required to be provided by a person who is genuinely independent of the design process and the project more broadly. Second, there needs to be consequences for a person's ability to continue to undertake design work in Queensland where it can be shown that they have repeatedly failed to provide compliant designs.

There should also be reform of the current Building Regulation prescribed forms number 12, 15 and 43 relating to verification of compliance at different stages of the construction authorisation process and construction compliance verification processes. These forms are not well understood across industry and by changing who can issue these to persons with independence from the project and simplifying what each provided form covers, a more efficient process of compliance verification is possible.

The current approach to mandating inspections is a barrier to off-site construction and pre-fabricated / manufactured buildings and building elements. To take advantage of the benefits of these approaches to construction delivery there will need to be a change made to how mandatory inspections are required to be undertaken. This should allow a building surveyor to determine that a person is capable and independent so that inspections can be undertaken on behalf of the building surveyor whereby the building surveyor has caused mandatory inspections rather than undertaken them directly.

Legislation to regulate the activities of developers, project managers and soil classifiers should be introduced. The former Queensland government commissioned a report into the regulation of developers where it was found that many of the issues impacting the viability of participation in the construction industry, compliance motivation of the sector and consumer outcomes were attributable to developer input.

The use of special purpose vehicles for developments that cut off access to those responsible for defective work by consumers is a significant issue allowing poor developments to continue to plague the sector. Regulating developers by requiring all persons who have decision making responsibility to be registered with consequences and accountability beyond the life of a special purpose vehicle will curtail the poorest behaviours so that consumers and investors can once again be confident in the sector. This will also allow those within the sector responding to developer requests for cheaper faster construction approaches that don't condescend to compliance are empowered to speak up and resist such pressures knowing that they are backed by a regulator with a common interest in consumer outcomes.

Project managers provide significant influence over decision making processes in construction and currently are able to do so without any formal qualification or skills maintenance criteria and with no responsibility for any of the decisions taken because the existing license is not enforced. Construction outcomes would be improved by ensuring that only people properly qualified are able to participate as project manager, with the existing license category of 'builder – project management services' needing to be enforced for all who provide this work. Additionally, project

managers should expect that they will not be able to continue to participate in the sector if their projects produce poor consumer outcomes.

Soil classification is essential to understanding foundation design. A soil classifier has no accountability within the current system as there are no qualification benchmarks to do this work. To properly classify a soil it is appropriate to make observations of sufficient numbers of soil samples taken from locations of relevance across an allotment of land that is proposed to be developed.

In many instances, soil classifiers will provide a classification certificate based on evaluation of soil maps and reports from broad scale site filling undertaken at subdivision of land approval stage. The costs and impacts on consumers from incorrect soil classification are considerable.

When the footing design based on the soil classification certificate cannot be constructed because the soil conditions don't match the classification certificate, the cost blow outs place considerable financial strain on consumers. If the contractors undertaking excavation for the designed footings are unaware that the soil differs from the classified soil so that a change in footing design is required, the result is a building that has inadequate footings and costly failures often follow that should attribute to the soil classifier. The current system of accountability across the sector is incapable of transferring responsibility in this manner so that the risk is borne by others.

A soil classifier license would provide better visibility of those who are not acting appropriately so that they can be encouraged to modify their practice or be removed from practice where necessary.

Expanding programs of attraction and retention to include construction industry professionals

There is a great deal of effort being made by the Queensland government to attract people to enter trade qualifications and become construction industry workers. This is intended to address well known shortages of trades and labour within the construction sector. Conversely, no effort is being made by the Queensland government to address well known shortages of construction industry professions.

There are significant delays currently occurring as a result of the shortage of construction industry professions in Queensland. Lead time for design work is protracted. Once an approval is lodged, the time to assess applications is also protracted. Once approved, management of construction once commenced is often limited to ensuring that work coordination occurs with little or no time able to be spent ensuring the standard of work performed is appropriate.

This is set to worsen with the demographics of construction industry professionals being such that at least half of all involved are over 50 years old with up to a third of building surveyors likely to reach retirement age within the next 10 years.

There is a relatively short lead time involved in producing trades and labour for the construction industry. This is not the case for construction industry professionals with most needing to undertake an Australian Qualification Framework Level 8 qualification at university in addition to at least three years of supervised experience at the appropriate level of work to become qualified. This translates to at least 7 years of training for most professions in the sector – engineers, architects and building surveyors particularly. Other professions such as town planning, valuation, land surveying, conveyancing and quantity surveying involve shorter lead times to qualification of 5 to 7 years.

These professions are not particularly well known within the community outside of engineering and architecture. Consequently, opportunities to attract people to study these professions are rare. Without significant investment in promotion of construction industry professions, this will not change.

A shortage of construction industry professionals will constrain the Queensland economy through limiting the supply of building work, irrespective of how many trades and labourers are able to be provided by the current funding and support arrangements.

Augmentation of cross sector accountability

AIBS notes that supervision of work under construction by builders has been steadily decreasing and that whilst this has been happening, there has also been a drop in productivity observed and reported by the National Productivity Commission. At the same time, reports about falling standards of quality and compliance have been increasing. AIBS believes there is likely to be a correlation between these three observations that is potentially a direct relationship.

It is therefore reasonable to conclude that a significant improvement in regulation of supervisory inputs by builders would provide a lift in productivity, and is also likely to improve the quality of output of the sector.

AIBS response to specific elements of the TOR

In this section of the submission, AIBS provides its response to each of the terms of reference elements in the order that they are provided in the TOR document.

Terms of reference item	AIBS Response
An inquiry reviewing the factors driving productivity in the Queensland construction sector and make recommendations for reform to improve productivity without compromising quality and safety outcomes	<ul style="list-style-type: none">• Legislative complexity and uncertainty• Security of engagement for building surveyors• Government procurement policy conditions regarding PII cover for members of the AIBS PSS for Building Surveyors• The lack of smart forms and administrative burdens arising thereof• Online database for each site/construction activity to record who worked on these sites in what function. Will give trades access to building approvals information, and statutory building surveyors access to construction compliance verification information
State and local government legislation and regulation, including in relation to land use, urban planning, building, licensing and workplace health and safety	<ul style="list-style-type: none">• Legislative complexity and uncertainty• Local government seeking to implement policies regulating development locally either in addition to or contrasting with state policies for the same developments• Disconnected regulation of land uses from technical compliance for building work and compliance with waste water treatment rules etc.
State government procurement and contracting policies, including Best Practice Industry Conditions	<ul style="list-style-type: none">• Government procurement policy conditions regarding PII cover for members of the AIBS PSS for Building Surveyors
Skills and labour force issues	<ul style="list-style-type: none">• Protracted shortage of supply of building surveyors• Significant foresight needed to overcome essential long lead time qualification in building surveying• Retention issues arising from legislative complexity, unequal risk burden
Current conditions in the housing market, residential development sector, infrastructure delivery and construction sector in Queensland, including in both housing and non-	<ul style="list-style-type: none">• Antiquated approach to record management – need a portal to submit all documentation and approval / compliance records

Terms of reference item	AIBS Response
residential construction as they relate to the delivery of additional housing supply and housing affordability	<ul style="list-style-type: none"> • High demand vs few practitioners causing approval and compliance activity delays, slowing process of getting to site and once on site, slowing progress of work • High demand with low levels of builder supervision is driving quality issues and several compliance defects that require rectification before work can progress • System is not well suited to off site manufacture of housing where quality and compliance issues should be better controlled by suppliers subject to appropriately independent compliance checks and balances
Key trends in the sector including input costs, prices, competition, supply chain developments, productivity, and relevant comparisons with other jurisdictions and, where possible, across Queensland regions	<ul style="list-style-type: none"> • Cost of housing construction is higher in Queensland than in South Australia where supply of labour and materials is significantly restrained – legislative differences are key driver of this difference in locations not subject to cyclonic winds
Productivity on residential, commercial and infrastructure construction sites, across a range of typologies and locations, relative to productivity performance in other States	<ul style="list-style-type: none"> • This element of the terms of reference is one where AIBS has no comment to make
Factors shaping Queensland's productivity performance including commonwealth, state and local government legislation and regulation, industrial relations matters, procurement policies and labour force needs (individually, cumulatively or through duplication) and opportunities for improvement	<ul style="list-style-type: none"> • National Construction Code is varied by Queensland Development Codes which are further varied by local councils so that technical compliance is highly uncertain within Queensland for any entity wishing to supply to that market from outside Queensland • These factors also make it difficult for entities looking to work across the State rather than in the local region where the entity is based
The opportunities for improvements in productivity in Queensland including regulatory and non-regulatory mechanisms	<ul style="list-style-type: none"> • AIBS Building Regulatory Reform Policy • Shergold and Weir Building Confidence Report • National Productivity Commission report into the Domestic Building Sector • Dr Stephen Scimonello's PHD paper on maintenance of essential safety measures to address over servicing and compliance failures in that area of building asset management
Priority areas for reform for the Queensland Government to efficiently address identified challenges in the short, medium and long term (including but not limited to labour availability, skills availability and market competition, the availability of suitably qualified head contractors and sub contractors etc) key recommendations and themes	<ul style="list-style-type: none"> • Regulatory reforms designed to: <ul style="list-style-type: none"> ○ Remove complexity ○ Remove variation of technical requirements ○ Simplify administrative processes ○ Re-distribute risk burden to those who are realistically responsible for the work performed

Terms of reference item	AIBS Response
from other relevant productivity reviews, including those undertaken by the Australian Government Productivity Commission	
Impact on small and medium scale subcontractors in regional areas to compete for government tenders due to regulatory requirements	<ul style="list-style-type: none"> This element of the terms of reference is one where AIBS has no comment to make
Flow on effect across the industry of government regulations to compete for labour and resources on both wages and work conditions	<ul style="list-style-type: none"> Many building surveyors are moving to allied roles in other industries to avoid the complexity and risk posed by the system of regulation in the building industry
Factors that limit the availability of suitable labour for building and civil construction, skills development of the labour force, and matching of labour supply with sector demand, and how policy settings can be improved	<ul style="list-style-type: none"> Lack of visibility and therefore community recognition of building surveying as a construction industry profession that may match the career interests and aspirations of potential entrants
How government procurement and contracting arrangements, including Best Practice Industry Conditions, affect productivity in the construction sector, and how practices and policy settings can be improved	<ul style="list-style-type: none"> Government procurement policy conditions regarding PII cover for members of the AIBS PSS for Building Surveyors impacts in the following ways: <ul style="list-style-type: none"> capped liability for scheme members is less than the liability limits required to be provided for complying tenders forces members to apply for extensions of capped liability limits to win the work removes the benefits of capped liability via PSS environments additional premium and associated costs added to the cost of the project without productive improvement
Barriers to entry, investment and innovation in the sector, and potential options to address those impediments	<ul style="list-style-type: none"> Legislative complexity and uncertainty of the approval and compliance verification processes
Key issues to be considered in implementing reform options identified and views on how recommendations could be prioritised	<ul style="list-style-type: none"> Housing construction sector is highly resistant to accountability measures
In considering policy responses, the inquiry should focus on the key systemic policy and regulatory settings that impact construction sector productivity	<ul style="list-style-type: none"> Error mitigation measures Mitigation of rework driven by non-compliance Active and capable regulation Consumer outcomes focussed compliance and enforcement
Similarly, the inquiry should primarily focus on those areas that can be influenced by the Queensland Government.	<ul style="list-style-type: none"> Resourcing and administrative arrangements of the QBCC Regulator support of building surveying role in delivery of consumer outcomes

Terms of reference item	AIBS Response
	<ul style="list-style-type: none">• Online portal related to the whole of Queensland instead of being managed by each local government
However, where there are critical issues that fall within the scope of local government or Australian Government policy, the inquiry should identify such issues and provide options to inform the Queensland Government's engagement on these matters	<ul style="list-style-type: none">• National product assurance framework• National Construction Code Amendment to incorporate Queensland Development Code matters not currently covered in the NCC BCA/PCA

In closing

AIBS is committed to working with government, industry and key stakeholders to continually improve the building regulatory system throughout Australia.

Please contact us for any clarification or further information that may assist.

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2 June 2025

Queensland Productivity Commission
Att: Ms A. Moody

Dear Ms Moody,

**Construction Productivity
Preliminary Submissions**

Thank you for the opportunity to provide public consultation in respect of the Commission's Construction Productivity inquiry.

Mr Luke Neller is the QLD/NT Board Director for the Australian Institute of Building Surveyors ("**AIBS**"), the director of Leeward Management Pty Ltd ATF LE Trust T/As Project BA ("**Project BA**"), and an experience senior private building certifier. Ms Timmins is in-house counsel for Project BA, who you will note has been heavily involved in judicial proceedings regarding planning and environment law matters. Note, this submission is on behalf of Project BA and not the AIBS.

These submissions focus on industry specific issues which appear to be faced consistently across the industry. These included:

- (a) Jurisdictional duplication with local governments regulating building assessment provisions,¹ which ought to properly be regulated by a building certifier through the building development application process and not duplicated² ("**regulatory complexity**");
- (b) inconsistencies between local governments in interpretation and application of legislation and legislative provisions, including inconsistency in how local planning schemes operate, and what can be regulated within local planning schemes ("**regulatory inconsistency**");

¹ Defined in section 30 of the *Building Act 1975 (Qld)*.

² Section 8(5) of the *Planning Act 2016 (Qld)*

Regulatory Complexity and regulatory inconsistency

These two issues have been addressed together as they largely overlap. However, Regulatory complexity is where councils are regulating matters already regulated by building certifiers, such as triggering development applications for building works in flood, bushfire, or other overlays, where these are already regulated under building assessment provisions where council is may be a referral agency. Where as Regulatory inconsistency is in reference to neighboring local governments having a different development procedure for the same issue.

It is not uncommon for local planning instruments to regulate matters already regulated by the building assessment provisions, by including them in their local planning scheme as different “types” of development (e.g. material change of use). While section 8 of the *Planning Act 2016 (Qld)*, and the Explanatory Note for that provision, appear to seek to avoid “building work” regulated by the building assessment provisions being regulated by local planning instruments. However, a recent decision by the Court of Appeal in the matter of *Leeward Management Pty Ltd v Sunshine Coast Regional Council [2025] QCA 11*, effectively determined that local planning instruments can legitimately regulate matters regulated by the building assessment provisions through other “types” of development applications (e.g. a material change of use). Essentially, the current legislative framework includes a loophole that allows local government to regulate matters the legislature never intended them to.

We say it appears the legislature never intended for local governments to regulate these matters because of the content 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)

At the local level, regulation of certain aspects of development is inconsistent across the local jurisdictions, with different application types being required for the same matter. Some examples include:

- (a) if you propose demolishing a dwelling (and there is nothing unusual such as character or heritage issues), Gympie Regional have no requirements whereas Noosa Council require a planning development application for building works and a referral agency response;
- (b) if you propose building a dwelling house over the prescribed height limitation, Brisbane City Council require a referral agency response whereas Sunshine Coast Regional Council require an impact assessable planning development application for material change of use.

This is confusing for the industry, contributes to regulatory complexity and impacts the productivity of the construction industry. Not only because developers, builders, town planners and building certifiers have no certainty as to what the requirements are for the construction of essentially the same proposal among the various local jurisdictions, but often what is required of the local council is contrary to what is prescribed by the legislation.

For example, when a referral agency response is required is prescribed by Schedule 9 of the *Planning Regulation*. I.e. because it is prescribed by the Regulation, there ought to be consistency across Queensland as to when a referral response is required for proposed development, there should be no inconsistency in that respect across local jurisdictions. However, there is.

Further to the above, this type of inconsistent legislative interpretation and application impacts the confidence of private building certifiers, as they have a legal obligation to ensure all the necessary approvals and referral responses are obtained prior to issuing a building development permit.³

At the judicial level, judges are often required to give significant consideration to the current legislative regime to determine the interpretation and application of legislation. See for example the judgement of *Leeward Management Pty Ltd v Noosa Shire Council [2022] QPEC 58*, which comprises a 48 page judgement, a large portion of which turned to determining the interpretation and application of sections 54(3) and 60(4) of the *Planning Act*.

Alternative Provisions – Varied between each Local Government jurisdiction.

While the QDC and the draft housing provisions provide consistent assessment benchmarks for housing across the state, the current legislation allows each local government to vary these benchmarks locally. This is done through a series of mechanisms including:

³ *Building Act*, section 83.

- Alternative provisions to the QDC⁴
- Making provisions about building matters⁵
- Amenity and Aesthetics Provisions⁶
- Building matters not regulated by the building assessment provisions⁷
- Plans of Development and other conditions imposed by earlier development approvals

This ability to create local government housing provisions becomes complicated for the entire construction sector, where they are not experienced with the specific nuances with that area. The outcome of this is:

- a burden on those in the design team in understanding site constraints, modifying building plans, and back and forth with non-compliances that were missed initially.
- a burden on certification teams to understand site constraints and required approvals for non-compliances, back and forth with local governments about local processes in development pathways for identified non-compliances, back and forth with design teams to remedy any breaches.
- Degradation of well-designed building layouts which have been optimized for functionality, efficiency, materials and construction methodologies.

There is little accountability on local governments to ensure they are consistent with these regulatory provisions, and in many cases these powers and functions are abused and used as loopholes, which will be discussed later.

Building certifier attraction retention

While there are a number of issues contributing to the current figures for building certifier attraction retention, some of which are in depth, we only intend on briefly addressing some of these issues in this letter. Attraction and retention of building certifiers is critical for productivity in the construction sector. Shortages of building certifiers will lead to increased approval timeframes, less consulting and advisory to the sector, and either reduced number of inspections or lengthy wait periods to book mandatory inspections.

The *2022 Local Government Workforce Skills and Capability Survey* Final Report found that the top three occupations that local government found difficult in recruiting were town planners, engineers and building certifiers, with those occupational skill shortages becoming critical. The report revealed the key drivers for the occupational gaps in building certification included impacts of private certification, lack of staff interest to upskill, insurance costs, and a lack of applicants with required skill, experience and accreditations. It is clear from the data available regarding building certifiers, critical skills shortage is not unique to the public sector. There are currently approximately 510 qualified building certifiers in Queensland⁸, and Skye Bowie of the Queensland Building and Construction Commission recently made comment that a significant number of those certifiers are approaching retirement age and are expected to retire in the next 10 years. A critical shortage of building certifiers is detrimental to the construction

⁴ Building Act, section 33

⁵ Building Act, s32

⁶ Planning Regulation Schedule 9, Part 3, Div 2, Table 1

⁷ Planning Act, s8

⁸ According to a recent statistic stated by the Queensland Building and Construction Commission, the regulatory body for building certifiers in Queensland.

industry.

While we acknowledge that there are several contributing factors, regulatory complexity is a significant factor in building certifier attraction retention, both directly and indirectly.

Directly, the regulatory complexity and inconsistencies experienced across every local government, and sometimes even experienced when dealing with different staff within the same local government:

- (a) are a strong deterrence in building certifier attraction and retention because such complexities and inconsistencies create feelings of professional incompetence, uncertainty and/or professional frustration and stress; and
- (b) create or exacerbate liability concerns among building certifiers, who have a legal and professional responsibility to ensuring all necessary planning approvals are obtained prior to issuing a building development approval,⁹ assessing building development applications to decide whether they comply with the building assessment provisions¹⁰ (which include local government planning schemes),¹¹ and ensuring compliance with the National Construction Code, Queensland Development Code, and relevant standards.

Indirectly, that regulatory complexity and inconsistency:

- (a) unnecessarily increases the level of assessment and/or inspection required of the building certifier, where the building certifier is required to increase fees and delay in providing services which results in increased costs and delays for the consumer and the housing construction overall;
- (b) contribute to burn out in individuals, which results in scaling back workload and/or leaving the industry entirely.

Regulatory complexity and ever-changing laws and standards also indirectly impact building certifiers' professional indemnity insurance. The premiums for this type of insurance are, to put it mildly, absurd. Where a building certifier has been the subject of a regulatory audit or investigation (which alone is a burden on both individual and business output), those insurance premiums can further increase. This significant cost of business is required to be passed on to the consumer through increased fees charged in order for any certification business to remain viable.

Finally, adding to the direct and indirect impacts of regulatory complexity, there is a serious lack of industry support. Building certifiers do not have a supporting body, only a regulatory one, being the Queensland Building and Construction Commission which monitors building certifiers through audits and investigations of written complaints alleging unsatisfactory conduct or professional misconduct. In the past, we have personally sought assistance from the QBCC for guidance on issues of regulatory complexity, only to be turned away. We have also sought guidance from Building Policy at the Department of Energy and Public Works, where we received a general non-specific response which also

⁹ *Building Act*, section 84(1).

¹⁰ See *Building Act*, section 30.

¹¹ See *Building Act*, section 30(e).

included a disclaimer that same was not legal advice and could not be relied upon. My experience, and the experiences reported to me by my peers, poses the question: is our role as a building certifier a prestigious position within the community, or an industry scape goat?

We consider building certifiers, and the construction industry as a whole, would benefit from having a supporting body. That supporting body could have jurisdiction to issue determinations, similar to that of the Australia Taxation Office issuing Tax Rulings, to assist building certifiers in exercising discretion and making decisions for complex practical issues. The benefits from such a supporting body would be significant, including reducing certifier stress and burn out, reducing the risk of complaints being made to the QBCC in respect of a certifier's conduct, and reducing premium quantum for professional indemnity insurance.

We have only touched on these matters briefly, however should you be interested, we would welcome the opportunity to address this issue further.

CASE STUDIES AND EXAMPLES OF REGULATORY COMPLEXITY

We were in attendance at the AIBS QLD/NT Chapter Conference 2025 and had the benefit of watching Ms Angela Moody give a presentation regarding the Queensland Productivity Commission research and note her advice that the QPC is seeking submissions regarding case studies and examples.

Below are some of the examples of how regulatory complexity impacts private certification, and in turn the construction industry. Other than where a judgment of the Court was involved, we have omitted naming the particular local government involved as we wish to encourage local governments to continue to collaborate with Project BA in resolving these types of issues. However please note, the examples we have provided each involve a different local government.

Example 1: Noosa Shire Council

Project BA and Noosa Council were in dispute over the interpretation of the planning development approval process required by the *Planning Act 2016 (Qld)* ("**Planning Act**"). They were unable to resolve the dispute without Court intervention and the matter was required to be heard and determined by the Planning and Environment Court.

Project BA contended that where a planning development application was properly made to the council, the council was required to include any required referral response for the proposal as part of its decision notice and was required to do so without charging any additional fee. Project BA relied upon sections 54(3) and 60(4) of the *Planning Act* to support that contention.

Noosa Council contended that they were only required to assess and decide the planning development application, and that a separate building development application was required to be referred to them by the building certifier in respect of any concurrency agencies matters.

In 2022, His Honour Judge Long made an interim Judgment¹² in favour of Project BA and held that

¹² *Leeward Management Pty Ltd v Noosa Shire Council* [2022] QPEC 58

Noosa Council was required to assess the planning development application as the assessment manager and with the functions and powers it would have had as a referral agency for the singular fee.

In 2023, His Honour Judge Long reaffirmed:

“[4] ... the overall effect is that, in order for the appellant to have decisions and the necessary decision notices, as to all of the necessary approvals for the proposed development, this development application, as properly made to the Council:

- (a) required assessment by the Council as to the planning approval which was involved, including to any extent to which that also involved the Council’s responsibility as a referral agency;*
- (b) required that this determination be the subject of a decision notice as to the application for approval of the proposal having regard to the planning perspective; and*
- (c) also required the inclusion of any referral agency response in respect of the building approval, so that the private certifier could make the necessary decision having regard to any requirements of the Council as referral agency.”* (my underlining)

[23] ... it is necessary to return to the earlier observations as to the basis upon which this matter is before the Court and particularly the understanding that the decision which is now being made is that which was required of the respondent pursuant to s 54(3) and 60(4) of the PA.

[24] That is, in particularly understanding that the effect of s 54(3) is not to put aside the role of the respondent as a referral agency but rather to include such functions and powers with those to be performed as assessment manager. ... Accordingly, the decision should follow a format which would be ordinarily expected and which seeks to identify those conditions which are required, pursuant to the exercise of those referral agency functions and powers, to be imposed by the granting of any such permit.”

On 17 October 2023, His Honour made the final Judgment, which:

- (a) ordered that the planning development application made by Project BA was approved subject to the conditions;*
- (b) included, within those development approval conditions, “2. REFERRAL AGENCIES” and recorded:*

“The Assessment Manager would have been a referral agency pursuant to Planning Regulation 2017, Schedule 9, Part 3, Division 2, Table 3 – Design and Siting for part of the application (building work assessable against the building assessment provisions) and so has the functions and powers of a referral agency for that part.

*The Assessment Manager exercising its functions and powers it would have had as an Referral Agency requires any Development Permit for Building Works in relation to that building work to be subject to conditions 3 and 4 from Part 1 of this approval and the following conditions:
...”*

In those Judgments, the Planning and Environment Court not only clarified the interpretation and application of sections 54(3) and 60(4) of the *Planning Act*, it also clarified the “*format which would be ordinarily expected*” for a decision notice where Council is the assessment manager and has the functions and powers of a referral agency.

The Queensland Ombudsman, who investigated the Noosa Council in respect of this issue, recognised the effect of the abovementioned judgments and made the following observation to the Council at the close of its investigation:

“Observation 2: Council develop and use a template for its development approvals for combined AM and RA decisions consistent with that utilized by the Court in Leeward Management Pty Ltd v Noosa Shire Council [2022], Judgment, 17 October 2023.”

Project BA’s contention, and the ultimate Judgment that was received, simplified and expediated the residential development process where local government is required to assess development proposals in all of its jurisdictions (i.e. assessment manager and referral agency) for a single fee.

This case set a precedent that benefits the development process by confirming the operation of the legislation and streamlining the development approval process.

Some local governments already applied the legislation and carried out this process correctly prior to the abovementioned Judgments being obtained. Some local governments have accepted and applied the correct operation post-Judgment.

Some local governments have quasi adopted the Judgments by purporting to issue a planning development approval with an “early referral response” (despite the Court specifically noting this was inappropriate).¹³

However, enforcement of those Judgments continues to be a challenge among some local governments. The basis for some local governments rejecting the effect of the Judgments is typically by reference to the “type” of planning development application lodged, despite the Judgment and the legislation not limiting the “type” of planning application in any way.

Finally, as recently as 14 March 2025, the Noosa Council itself has deviated from the correct approach despite being the local government at the forefront of the Judgments and Queensland Ombudsman’s investigation.

In terms of timeframes, the matter was brought before the Court in January 2022, the interim Judgment was made on 23 December 2022, the council had difficulty in accepting, understanding and/or adopting that Judgment, and the parties continued to be in dispute as to what was required. His Honour Judge Long reiterated the [2022] Judgment in his [2023] Judgment and the appeal was ultimately decided in favour of Project BA by Judgment dated 17 October 2023. Project BA was required to engage in an almost 2 year Court proceeding to confirm and enforce a process that was already prescribed by sections 54(3) and 60(4) of the *Planning Act*.

¹³ See for example paragraphs [40] and [47] of *Leeward Management Pty Ltd v Noosa Shire Council [2022] QPEC*
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Example 2: awaiting judgement

In 2023, a local government refused to accept the application of the legislation and precedent set by the abovementioned Judgments involving the Noosa Council.

Project BA has lodged an appeal with the Planning and Environment Court for a matter that closely mirrors the facts of the dispute involving the Noosa Council. The proceeding was heard by the Court in April 2024, however is still awaiting judgment.

Example 3: different type of application required

Project BA submitted a planning development approval to the local government proposing a shed be constructed on residential land.

As the property was the subject of a historical reconfiguration of lot, the approval of which conditioned that future development on the future allotments was required to comply with a plan of development. The proposed shed did not comply with conditions contained in that plan of development, and also did not comply with the setback requirements prescribed by the Local Planning Instrument under section 33 of the *Building Act 1975 (Qld)*.

The plan of development also involved a notation that any non-compliance with such conditions required a referral agency response. However, Project BA considered the Plan of Development could not prescribe when a referral agency response was required, that was a matter properly prescribed by the *Planning Regulation*.

It became evident that the local government had historically dealt with the same non-compliances inconsistently. Sometimes as a referral agency response, sometimes as a change application, sometimes as a planning development application, and sometimes as generally in accordance advice.

The council contended that a minor change application was required in respect of the existing plan of development as well as a referral for siting matters.

Project BA considered that a minor change application was inappropriate, particularly so where there are no appeal rights to the Development Tribunal and so Court intervention would be necessary for any such decision.

Accordingly, Project BA contended that the proposed construction of a shed on residential land required a planning development approval (building work) as it exceeded the maximum floor area and building height prescribed in a condition on the plan of development, and any design and siting matters (boundary setbacks) was a referral agency issue.

The crux of the matter was in respect to section 66 of the *Planning Act*, which allows an assessment manager to impose development conditions that are inconsistent with an earlier development approval, provided certain criteria are met.

The dispute was originally put before the Development Tribunal in or about March 2022, however after significant party liaison, a site meeting and various submissions (including a joint report by the parties), some 6 months later, on 6 September 2022, the Development Tribunal issued a decision that it did not have jurisdiction to determine the matter and finalised the appeal.

In September 2022, Project BA brought proceedings in the Planning and Environment Court for this matter. However, the matter was never determined by the Court as the parties agreed to a consent judgment in favour of Project BA, which was filed on 20 April 2023 (some 7 months after the notice of appeal was filed and over 1 year after the proper application/referral was provided to the council).

The local government later advised Project BA, and other private building certifiers, that council did not have jurisdiction to govern such aspects of the plan of development and that assessment of same was not a council requirement.

Example 4: reading and application of planning schemes

In 2023, Project BA filed an originating application in the Planning and Environment Court against the local government contending that a building development application, for a dwelling extension proposed to be constructed within the minimum boundary setbacks, required referral to the local government for design and siting only, and an impact assessable planning development application was not required.

The local government contended that the wrong type of application had been lodged because the proposed development was for building works assessable against the local planning scheme and, as the site was within a Mixed Use Zone, the proposal was categorised by the local planning scheme as material change of use tables of assessment as assessable development requiring impact assessment.

The matter was not determined by the Court because the local government, despite having in-house counsel, sought external legal advice and ultimately agreed Project BA contended for the correct procedure.

The dispute took almost 2 months to resolve, which is significant when considering it simply came to being able to correctly read and apply the council's planning scheme.

Example 5: further confusions between application type

Project BA was involved in a dispute with a local government where a building development application was referred for design and siting matters and the council responded contending that a planning development application requiring impact assessable was the correct type of application required for the proposal.

After failed discussions between the private building certifier and the local government it was to me as Project BA's in-house solicitor. A letter was forwarded to the local government detailing why the proposed works were "building work", not "material change of use", and the correct reading and application of the local planning scheme. The local government was also referred to previous proceedings involving and local government (example 4 above) as it had fallen into similar error as was involved in that proceeding.

The local government's coordinator for planning services engaged in discussion with Project BA in an attempt to understand how the relevant authorities fit together and ought to be applied. That officer also made an admission that she was not overly familiar with Schedule 9 of the *Planning Regulation* (which is alarming because it is the very provision which prescribes local government as referral agency for referral matters) and discussed the appropriate procedure and treatment for the proposal in respect of the existing material change of use permit. After such discussions, and a detailed work through of the legislative regime, the local government agreed with Project BA, the dispute was resolved and the appropriate referral response was issued.

Example 6: Project BA v Sunshine Coast Regional Council [2025] QCA 11

Recently, Project BA and the Sunshine Coast Regional Council were involved in a proceeding that was determined by the Supreme Court of Queensland – Appeal Division.

The Sunshine Coast Regional Council's Planning Scheme regulates the building height of dwellings by categorising development exceeding the prescribed height limit as triggering a material change of use requiring impact assessment.

Project BA made an application to the Planning and Environment Court and contended that the local council must not regulate building height for class 1 and 10 buildings as material change of use requiring impact assessment, because building height is a component of building work to be regulated by the building assessment provisions and relied upon section 8 of the *Planning Act* as authority for its position.

Project BA relied upon the following in support of its argument:

Sections 8(5) and (6) of the *Planning Act* prescribes:

- “(5) *A local planning instrument must not include a provision about building work¹⁴, to the extent the building work is regulated under the building assessment provisions¹⁵, unless allowed under the Building Act.¹⁶*
- (6) *To the extent a local planning instrument does not comply with subsection (5), the local planning instrument is of no effect.*”

See also definitions in Schedule 2 of the *Planning Act* of:

- “development”;
- “building work”; and
- “material change of use”.

Relevantly, the Explanatory Note for the *Planning Act* also sets out, on pages 208-209:

¹⁴ “building work” is defined in Schedule 2 of the *Planning Act*.

¹⁵ Building assessment provisions are defined in section 30 of the *Building Act*.

¹⁶ What is allowed under the Act in respect to regulating the building assessment provisions? See sections 31 – 33 of the *Building Act*.

“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.

...”

The Sunshine Coast Regional Council relied upon the “type” of development application that was before the Court (being a Change Application to a material change of use) to support its position that building height could be regulated by the planning scheme as an assessment benchmark for a planning approval.

In the below Court, Planning and Environment Court found against Project BA without making any reference to section 8 of the *Planning Act*. Project BA appealed that decision to the Court of Appeal.

The Court of Appeal also found against Project BA and stated:

“[38] The definition of “building assessment provisions” in s 30(d) of the BA includes “any provisions of a regulation made under this Act relating to building assessment work or accepted building work” By s 6 of the Building Regulation 2021 (Qld), Design and siting standards for single detached housing, a local government planning scheme may provide for “all or some of performance criteria 4, 5, 7, 8 or 9 under QDC Part 1.1 [and 4, 5, 7 or 8 under QDC Part 1.2] and the acceptable solutions for the performance criteria” and “a qualitative statement for a matter provided for under the performance criteria mentioned in [s 6(b) of the PR], if the [planning scheme] also provides for quantifiable standards for the statements.”

[39] The relevant planning scheme, insofar as it dealt with height of buildings and structures overlay, details maximum height from ground level to the top of a structure erected on that site, for the purposes of determining category of assessment. The planning scheme does not provide any performance criteria for “height” or any acceptable solution or quantifiable standards for heights.

[40] This may be contrasted with boundaries. Performance criteria is specified for boundaries, when the dwelling house is above certain heights.

[41] Section 5.10.4 of the planning scheme, insofar as it provides the assessment benchmark for

height of Building and Structures of Overlay, is not a provision about building work regulated under the building assessment provisions in the BA. ...”

As set out in the AIBS submissions, with respect to their Honours, we also invite you to consider how that Judgment operates with:

- (a) section 8(5) and (6) of the *Planning Act*;
- (b) the Explanatory Note to the definition of *material change of use*;
- (c) section 43, and particularly 43(1)(c), of the *Planning Act*; and
- (d) sections 30-33 of the *Building Act* (particularly 32, which is about making ‘provision’ as opposed to ‘alternative provision’ of QDC matters).

PROPOSED PATHWAY TO INCREASE PRODUCTIVITY

Industry stakeholders have suggested 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.

The *Planning Regulation* requires amendment to reduce procedural complexity. The *Planning Act* requires amendment to reduce regulatory complexity. We will address each of these in turn below.

Reducing procedural complexity

This involves amending the *Planning Regulation* 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.

This would simplify the development approval process, because it would have the effect that:

- (a) for all assessable development involving dwelling houses and/or ancillary outbuildings, 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 not only significantly reduce complexity, it would also have flow on benefits, including preventing procedural duplication, faster turnaround times for the issue of development permits, significantly reduce wasted costs, and simplifying the appeal process. Local

government staff and personnel may also experience work experience benefits from such an amendment, however we are not in a position to provide comment on that.

This amendment would also likely be relatively simple to implement because it would likely be able to be achieved through amendment of the *Planning Regulation*, in particular:

- (a) amending 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) amending 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) amendment to Schedule 8, Table 1A to make clear that table does not apply to a dwelling house and/or ancillary outbuilding on residential land;
- (d) amendment to 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.

One obvious 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.

The most efficient resolution to 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 requires 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 government¹⁷ and the “*inconsistent*” development condition would be permitted¹⁸ because both conditions were imposed by the “*same person*”,¹⁹ being the local government.

To be clear, local governments would not be relinquishing authority to control 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.

¹⁷ See *Planning Act*, sections 56(1)(b)(i) and 63(2)(e)(iii).

¹⁸ Subject to the other requirements of *Planning Act*, section 66(2)(b)-(c) being met.

¹⁹ As required by *Planning Act*, section 66(2)(a).

Reducing regulatory complexity

This is arguably the single most important requirement to easing regulatory burden inhibiting construction productivity.

We reiterate:

- (a) the intention of section 8(5) and (6) of the *Planning Act* appears to be in respect of preventing regulatory duplication and complexity by purporting to distinguish what are building matters and what are planning matters;
- (b) the Explanatory Note to the *Planning Act* definition of “material change of use” appears to support an intention to prevent regulatory duplication and complexity by expressly stating that building matters do not become planning matters just because a local planning instrument states as such;
- (c) the effect of the precedent of the Court of Appeal’s Judgment in *Leeward Management Pty Ltd v Sunshine Coast Regional Council [2025] QCA 11* is that a local planning scheme can categorise development for a material change of use as assessable development, prescribe the level of assessment, and provide assessment benchmarks, for aspects of development that involve building work regulated by the building assessment provisions.

The *Leeward Management Pty Ltd v Sunshine Coast Regional Council [2025] QCA 11* is not an isolated example of this type of regulation through local planning schemes. Despite section 8(5) and (6) of the *Planning Act*, local governments appear to include overlays in their planning scheme as a loophole (sometimes lawful and complicated work arounds, and other times unlawful) to provide them with a mechanism to regulate matters that are properly regulated by the building assessment provisions for building work. Obvious examples of how this is:

- (a) local governments making additional provisions for a building constructed in a bushfire zone, and/or categorising that development to trigger a development application. Local planning schemes should not regulate bushfire matters for building work as this is a building assessment provision regulated under the NCC. The Building Regulation 2021 only permits the local government to nominate a bushfire prone area (bushfire overlay mapping);²⁰
- (b) local governments making additional provisions for a building constructed in a flood hazard area, and/or categorising that development to trigger a development application. Local planning schemes should not regulate flood hazard matters for building work as this is a building assessment provision regulated under the QDC triggering local government as a referral agency to the extent of any non-compliance. The Building Regulation 2021 only permits the local government to nominate a flood hazard area (flood hazard overlay)²¹;
- (c) Regulation of other building matters similar to the above such as filling and excavation, fences, landslide, overland flow and stormwater, transport noise corridors, etc. All of these examples are

²⁰ Integrated building work in planning schemes – Guideline for local governments, section 3.9.1

²¹ Integrated building work in planning schemes – Guideline for local governments, section 3.11.1

regulated by building assessment provisions and ought not to be separately regulated by local planning instruments ‘Integrated building work in planning schemes – Guideline for local governments’ section 3.

- (d) local governments should not create blanket overlays to capture majority of (or every) site for the regulation of certain aspects of development. For example, the Brisbane City Council’s Dwelling house character overlay, Sunshine Coast Regional Council’s Height of buildings and structures overlay. In both these examples, the overlays were created to circumnavigate legislative provisions intended to simply or cut red tape;
- (e) local governments including *alternative provisions*,²² where the “*qualitative statement*” is the same as that prescribed by the QDC (e.g. no change to height or boundary setback limitations), which then purports to regulated other aspects of development, change the type of development, or change the level of assessment for development.

The abovementioned amendment to the *Planning Regulation* may effectively prevent local government’s utilisation of this loophole, however we consider section 8 of the *Planning Act* is also required to clearly define what can and cannot be regulated by local government instruments. The amendment could be 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*.

OTHER MATTERS

Further to the above, there are additional matters that we believe impede productivity in the construction sector. While we have not prepared detailed submissions on these matters, we have briefly included them below. Where the productivity commission is interested in these matters, we can provide more

²² *Building Act 1975 (Qld)*, section 33 and 30(g)i.

detailed submissions.

Inconsistency between local governments in defining what is an MCU and what is Building Works

The explanatory notes for the act clearly state the building work is the physical attributes of a building, while the MCU is the operation and function of the building once it is completed. This is inconsistently adopted with many councils, for example stating that a large extension to a dwelling house is a material change of use.

State Building Portal

This suggestion is for building approvals to be lodged to a central state building portal in lieu of the current process to lodge with local government. This could be funded by the document lodgement fees currently paid to local governments.

This would create a centralised database of each construction site and project, allowing trades to register as a person contributing to that project and gain access to the building development approvals, as well as uploading compliance documents and making declarations about the aspects of work they have undertaken.

This would improve productivity by having a centralised database of documentation, useful to both auditors (QBCC and QFES), as well as building certifiers carrying out future certification works on these buildings. Currently the process requires owners consent and a lengthy council application.

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:

- Be in an electronic format or in a portal that could be linked both to the licence credentials of the person submitting the forms.
- Electronic format would require all mandatory forms to be completed prior to submitting.
- 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.
- 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.

Administrative Burdens

With most certification being undertaken by private building certifiers, its 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 HWI Documents or the Qleave documents prior to issue of building development approvals. For some projects, its 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.

Timeframe complexities

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.

CONCLUSION

Procedural and regulatory complexity is a significant contributing factor to stifling production in the construction industry. Without legislative reform to clearly define regulatory jurisdiction and close legislative loopholes, it is unlikely other avenues will be implemented effectively for the desired outcome.

The changes proposed by the wider industry and relevant departments require legislative change to effect and enforce the intention of those amendments. Together, such changes would simplify the development process, reduce procedural duplication, reduce costs, increase certainty, and result in faster turn-around times for the issue of development permits.

Should the Commission be interested, we welcome further discussions on the proposals touched upon in this submission to support meaningful and practical reform.

Kind regards,



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