

## **Cross River Rail Delivery Authority Bill 2016**

**Report No. 37, 55<sup>th</sup> Parliament**  
**Infrastructure, Planning and Natural Resources Committee**  
**November 2016**



## Infrastructure, Planning and Natural Resources Committee

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### Acknowledgements

The committee thanks all those who briefed the committee, provided submissions and participated in its inquiry.



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## Chair's foreword

This report presents a summary of the Infrastructure, Planning and Natural Resources Committee's examination of the Cross River Rail Delivery Authority Bill 2016.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles to it, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank those organisations who lodged written submissions on the bill. In addition, I would like to thank the departmental officials who briefed the committee; Hansard staff; the committee's secretariat; and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.



Jim Pearce MP

**Chair**

November 2016

## Abbreviations

ALA	<i>Acquisition of Land Act 1967</i>
BCC / Council	Brisbane City Council
bill	Cross River Rail Delivery Authority Bill 2016
BMSS	Brisbane Metro Subway System
Board	Cross River Rail Delivery Board
CEO	chief executive officer
CRR	cross river rail
CRRDA	Cross River Rail Delivery Authority
CRR PDA	Cross River Rail Priority Development Area
department / DILGP	Department of Infrastructure, Local Government and Planning
ED Act	<i>Economic Development Act 2012</i>
FLP	fundamental legislative principle
Fund	Cross River Rail Delivery Fund
LSA	<i>Legislative Standards Act 1992</i>
MEDQ	Minister for Economic Development Queensland
OQPC	Office of the Queensland Parliamentary Counsel
PCA	Property Council of Australia
PDA	priority development area
proposed Act	proposed Cross River Rail Delivery Authority Act



## **Recommendations**

### **Recommendation 1**

**2**

The committee recommends the Legislative Assembly notes the contents of this report.



# 1 Introduction

## 1.1 Role of the committee

The Infrastructure, Planning and Natural Resources Committee (the committee) was established by the Legislative Assembly on 27 March 2015 and consists of three government and three non-government members.

The committee's areas of responsibility are:

- Infrastructure, Local Government, Planning and Trade and Investment
- State Development, Natural Resources and Mines, and
- Housing and Public Works.<sup>1</sup>

## 1.2 The referral

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the bill, and
- the application of fundamental legislative principles to the bill.

On 11 October 2016, the Deputy Premier, Minister for Infrastructure, Local Government and Planning and Minister for Trade and Investment, the Hon Jackie Trad MP, introduced the Cross River Rail Delivery Authority Bill 2016 (the bill). The bill was referred to the Infrastructure, Planning and Natural Resources Committee, with a reporting date of 24 November 2016.<sup>2</sup>

## 1.3 The committee's inquiry process

On 12 October 2016, the committee called for written submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of stakeholders. The closing date for submissions was 24 October 2016. The committee received four submissions (see [Appendix A](#)).

On 31 October 2016, the committee held a public briefing with officers from the Department of Infrastructure, Local Government and Planning (see [Appendix B](#)). The committee invited Brisbane City Council to appear before it at a public hearing but the Council declined the invitation.

Copies of the submissions, the transcript of the briefing, and responses to the questions taken on notice at the briefing are available from the committee's webpage.<sup>3</sup>

## 1.4 Policy objective of the bill

The objective of the bill is to establish the Cross River Rail Delivery Authority.<sup>4</sup>

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<sup>1</sup> Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 18 February 2016).

<sup>2</sup> Queensland Parliament, Record of Proceedings, 11 October 2016, pp 3677-3679, p 3729.

<sup>3</sup> See [www.parliament.qld.gov.au/ipnrc](http://www.parliament.qld.gov.au/ipnrc).

<sup>4</sup> Cross River Rail Delivery Authority Bill 2016, cl 3(1).

## **1.5 Estimated cost for government implementation**

The Queensland Government allocated \$50 million in the 2016-17 budget for the establishment of the Authority.<sup>5</sup> This included:

- \$11 million for employee expenses
- \$30 million for contractors and consultants
- \$9 million for other expenses.<sup>6</sup>

## **1.6 Government consultation**

With respect to consultation on the bill, the explanatory notes state:

*No community consultation has been undertaken with respect to the matters specifically addressed by this Bill. This is because this Bill sets up the framework for the Cross River Rail Delivery Authority and, of itself, does not have any community benefits or disadvantages.<sup>7</sup>*

As discussed in Part 2 of this report, Brisbane City Council was of the view that it should have been consulted regarding the bill.

## **1.7 Should the bill be passed?**

Standing Order 132(1)(a) requires the committee to determine whether to recommend the bill be passed. The committee could not reach agreement on whether the Cross River Rail Delivery Authority Bill 2016 should be passed or not be passed.

### **Recommendation 1**

The committee recommends the Legislative Assembly notes the contents of this report.

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<sup>5</sup> Cross River Rail Delivery Authority Bill 2016, explanatory notes, p 3.

<sup>6</sup> Cross River Rail Delivery Authority Bill 2016, explanatory notes, p 3.

<sup>7</sup> Cross River Rail Delivery Authority Bill 2016, explanatory notes, p 6.

## 2 Examination of the bill

### 2.1 Cross River Rail project

Cross River Rail (CRR) is a proposed 10.2km rail link from Dutton Park to Bowen Hills, with stations at Boggo Road, Woolloongabba, Albert Street, Roma Street and the Exhibition showgrounds. Just under six kilometres of Cross River Rail is through a tunnel under the Brisbane River and the central business district.<sup>8</sup> It is expected that the project will take about seven to eight years to construct and cost around \$5.4 billion.<sup>9</sup>

The bill defines the CRR project in relation to the Coordinator-General's December 2012 report for the environmental impact statement for the CRR project and any Coordinator-General's change report for the project.<sup>10</sup>

The CRR project includes the carrying out of:

- development, other than development prescribed by regulation, in a CRR priority development area (PDA), and
- PDA-associated development, other than PDA-associated development prescribed by regulation, for a CRR PDA.<sup>11</sup>

The majority of the submitters expressed support for the project.

Property Council of Australia:

*The Property Council of Australia strongly supports the delivery of the Cross River Rail project which has the potential to unlock significant economic growth opportunities for Queensland.*<sup>12</sup>

Brisbane City Council:

*Council is supportive of the Cross River Rail (CRR) project and the benefits it will bring to the city, particularly with the opportunity to work together with the Brisbane Metro Subway System project to deliver an integrated public transport system for our New World City.*

Heart Foundation:

*The Heart Foundation is making a submission to the Cross River Rail Delivery Authority Bill 2016 Parliamentary Inquiry, because we strongly support the delivery of a Cross River Rail project for Queensland.*

<sup>8</sup> Department of Transport and Main Roads, [Cross River Rail](#), April 2016. The alignment for Cross River Rail was 'selected from a careful analysis of over 100 design options, building on the planning from previous underground proposals': Department of Transport and Main Roads, [Cross River Rail](#), April 2016.

<sup>9</sup> Department of Infrastructure, Local Government and Planning, public briefing transcript, Brisbane, 31 October 2016, p 3. The cost includes some station upgrades in the corridor between Dutton Park and Salisbury but does not include new rolling stock as it is being managed separately: Department of Infrastructure, Local Government and Planning, public briefing transcript, Brisbane, 31 October 2016, p 8.

<sup>10</sup> Cross River Rail Delivery Authority Bill 2016, cl 6(1).

<sup>11</sup> Cross River Rail Delivery Authority Bill 2016, cl 6(2).

<sup>12</sup> Property Council of Australia, submission 1, p 1.

## 2.2 Cross River Rail Delivery Authority

### *Statutory framework*

The bill proposes to establish the Cross River Rail Delivery Authority (CRRDA or the Authority) for the purpose of facilitating economic development and delivering ‘the Cross River Rail project and the associated prescribed “transport-related projects”’.<sup>13</sup> Clause 10 of the bill provides that the Authority would represent the State. In this regard, the Authority would have ‘the status, privileges and immunities of the State’ because it will be ‘delivering the projects for the State and will be using funding provided by or through the State in carrying out its functions’.<sup>14</sup>

The explanatory notes advise the following in relation to the Authority’s statutory framework:

*The Authority will be an independent statutory body, operating on a commercial basis, with the power to acquire land connected to the Cross River Rail project and associated prescribed ‘transport-related projects’. It will operate outside of the political framework with an independent board, while still being subject to the oversight of the Queensland Government. It will provide a whole-of-government approach that addresses multiple government priorities, private sector demand, planning, and stakeholder and community engagement, providing project certainty for private sector investment. To the extent that they are required, the Authority will also undertake community service obligations relating to the projects.*<sup>15</sup>

The department provided the following reason for establishing the Authority as an independent statutory body:

*Establishing the authority as a statutory body will ensure that the authority has the necessary functions and powers to complete the complex package of work which forms part of the Cross River Rail. This includes the readiness for market phase, the procurement phase and the construction and contract management phase.*<sup>16</sup>

The department clarified that the bill was not introducing new powers and functions but that it would combine ‘various existing powers and functions into a single independent authority which will operate on a commercial basis.’<sup>17</sup>

The Property Council of Australia indicated its support for the statutory framework proposed for the Authority:

*The statutory framework proposed for the project’s delivery authority in the Cross River Rail Delivery Authority Bill 2016 is supported by the Property Council. Many of the approaches in the Act are consistent with the Barangaroo Delivery Authority Act 2009 (NSW) which has achieved a similarly complex city-building project for Sydney.*

*The proposed statutory body offers the best opportunity to focus the resources of Government to make this project a reality.*<sup>18</sup>

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<sup>13</sup> Explanatory notes, p 1; Clause 7 defines the meaning of a ‘transport-related project’.

<sup>14</sup> Explanatory notes, p 10.

<sup>15</sup> Explanatory notes, p 1.

<sup>16</sup> Department of Infrastructure, Local Government and Planning, public briefing transcript, 31 October 2016, Brisbane, p 1.

<sup>17</sup> Department of Infrastructure, Local Government and Planning, public briefing transcript, 31 October 2016, Brisbane, p 1.

<sup>18</sup> Property Council of Australia, submission 1, p 1.

### Oversight of the Authority

In regard to the Queensland Government's oversight of the Authority, the department advised that the bill 'provides a couple of mechanisms':

*... there are four government members on the board, although importantly they cannot themselves form a quorum. There will definitely be a role for those four government members to carry out as board members. Secondly, there is the power of direction that the minister has in relation to the authority.*<sup>19</sup>

Clause 16 makes provision for the second mechanism mentioned above, which would provide for the responsible Minister 'to give the Authority written directions about how it performs its functions or exercises its powers':<sup>20</sup>

*Compliance with the Minister's direction will be taken into account in determining whether the Authority has satisfied its duties pursuant to clause 72 of this Bill and the Financial Accountability Act 2009. While it is not anticipated that Ministerial direction would be a normal occurrence, the ability for the Minister to provide a statutory body with direction is consistent with Queensland Government policy and is intended to ensure the necessary flexibility for the Minister to take a 'best for project' approach where required.*<sup>21</sup>

The department clarified how the Authority would maintain its independence in this regard:

*The Minister must not give a direction about the content of any advice or recommendations given by the Authority. This is to maintain the independence of the Authority.*<sup>22</sup>

### **Functions and powers of the Authority**

Part 2 of the bill provides for the functions and powers of the Authority, including specific provisions about the Authority's power to deal with land and other property.<sup>23</sup>

### Functions of the Authority

Clause 12 sets out the Authority's functions. The explanatory notes advise the functions 'have been crafted to ensure that the Authority operates as a commercial, for profit, entity which acts commercially and competes in a market.'<sup>24</sup> The Authority's main functions proposed under the bill would be:

- to plan, carry out, promote or coordinate activities to facilitate economic development, and development for community purposes, in a cross river rail PDA, and
- to facilitate the efficient delivery of the cross river rail project and transport-related projects.<sup>25</sup>

The department provided the following clarification regarding the Authority's functions:

*The authority's functions are actually quite broad under clause 12 and they cover a range of activities which could be necessary to deliver the projects and the broader economic development initiatives. In essence, the authority will be responsible for identifying*

<sup>19</sup> Department of Infrastructure, Local Government and Planning, public briefing transcript, Brisbane, 31 October 2016, p 10.

<sup>20</sup> Explanatory notes, p 12.

<sup>21</sup> Explanatory notes, p 12.

<sup>22</sup> Explanatory notes, p 12.

<sup>23</sup> Department of Infrastructure, Local Government and Planning, public briefing transcript, 31 October 2016, Brisbane, p 2.

<sup>24</sup> Explanatory notes, p 11.

<sup>25</sup> Clause 12(1).

*opportunities and options for facilitating economic development in a Cross River Rail PDA; identifying and consulting with relevant entities about options to fund the project; and for giving advice to the minister or relevant entities about such matters. Subclause 12(3) of the bill sets out further functions of the authority. These include project planning, ensuring all the necessary approvals are in place; managing contracts; consulting with relevant entities about funding; and overall promoting the project.*<sup>26</sup>

#### *Submitter concerns*

While Brisbane City Council (BCC) expressed support for the Cross River Rail project, it 'strongly opposed the bill in its current form' and highlighted the 'broad powers, purpose and elastic scope of the CRRDA' as a 'serious concern'.<sup>27</sup> BCC was concerned that the bill and the proposed purpose, functions and powers of the Authority would negatively impact on the ability of Council to fulfil 'local government functions, specifically in relation to land use planning and infrastructure planning and delivery.'<sup>28</sup>

#### *Scope of the Authority's functions and powers*

One of the key concerns for BCC was the 'broad' scope of the functions and powers of the Authority as proposed under the Bill and the impact that this could have on Council's planning power.<sup>29</sup> BCC stated that the bill represented 'an unprecedented removal of planning power from the State's largest local government under the guise of a transport infrastructure delivery project.'<sup>30</sup>

BCC stated further:

*To remove Council from these functions and give such broad powers to a commercial entity who is not accountable to the community, and apply this framework to such a broad part of the city, represents a level of intervention by the Queensland Government previously unwitnessed in the history of the city*<sup>31</sup>

Part of BCC's concern relating to the scope of the functions and powers of the Authority is the proposed establishment of the cross river rail Priority Development Area (CRR PDA). BCC argued that the purpose of the bill was to 'allow for the declaration of a significant Priority Development Area (PDA) and PDA associated development areas and the establishment of a commercial entity to have broad powers to undertake land use planning, acquire land and self-regulate in order to fund the delivery of an infrastructure project.'<sup>32</sup>

BCC expressed the specific concern that '[t]he proposed CRR PDA will apply over an extensive area and once the PDA is declared it will have an artificial boundary, as the operations of the CRRDA will have no boundaries.'<sup>33</sup> BCC was of the view the lack of boundary for the CRR PDA would have wide spread ramifications for planning for the city:

*The proposed CRR PDA is not contained, is not defined and traverses a substantial geographical part of the city. Therefore the CRR project presents significant opportunity for the current range of interface issues to be amplified, particularly in relation to managing stormwater drainage, transport, open space and community facilities networks.*

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<sup>26</sup> Department of Infrastructure, Local Government and Planning, public briefing transcript, 31 October 2016, Brisbane, p 2.

<sup>27</sup> Brisbane City Council, submission 2, Attachment A, p 1.

<sup>28</sup> Brisbane City Council, submission 2, Attachment A, p 1.

<sup>29</sup> Brisbane City Council, submission 2, Attachment A, p 1.

<sup>30</sup> Brisbane City Council, submission 2, Attachment A, p 1.

<sup>31</sup> Brisbane City Council, submission 2, Attachment A, p 1.

<sup>32</sup> Brisbane City Council, submission 2, Attachment A, p 1.

<sup>33</sup> Brisbane City Council, submission 2, Attachment A, p 5.



*The Bill reflects a failure to understand the interconnectedness of planning and infrastructure in the city. It is not possible to indiscriminately permit significant deviations to land uses without considering the impacts over the remainder of the city. It is not possible to uncouple land use planning and all infrastructure planning and impacts across the city. The Bill enables and encourages a commercial entity to disregard this fundamental principle in the pursuit of commercial returns to fund a singular transport infrastructure project.<sup>34</sup>*

BCC stated that part of its concerns relating to the Authority and the CRR PDA was that they would contribute to the 'risk' that PDAs represent for developing 'a two speed development environment' in Brisbane:<sup>35</sup>

*The PDAs appear to be used to incentivise and attract development at the expense of the remainder of the city. The Bill serves to increase the imbalance of development attraction between PDAs and the remainder of the city, which is not sustainable.<sup>36</sup>*

Specifically, BCC expressed its view about the impact of the CRR PDA on Council's *Brisbane City Plan 2014* (City Plan):

*While the CRR PDA may contribute to development envisaged in Council's Brisbane City Plan 2014 (City Plan) strategic framework, it diminishes Council's ability to capture charges that would be used to fund infrastructure to support that growth. The PDAs compromise the fundamental strategic planning and infrastructure planning for the city. The proposed CRR PDA is particularly concerning as it allows a commercial entity, CRRDA, to potentially impact significantly on City Plan's implementation.<sup>37</sup>*

BCC was also concerned about several aspects of consultation. The first relates to consultation with Council on the bill. The second relates to ongoing consultation between the Authority and Council regarding cross river rail project matters:

*The Bill does not require the commercial entity to consult or include Council in any of its activities. The Bill was prepared with the full exclusion of Council and this approach is reflected throughout the Bill, as the commercial entity is not required to consider or consult with Council in any of its dealings.<sup>38</sup>*

For these reasons, BCC sought several amendments to the bill that would 'ensure that CRRDA will not have broad powers which have the potential to have far reaching consequences for the city':<sup>39</sup>

- ensure that City Plan's strategic intent is not compromised by the CRR PDA<sup>40</sup>
- mandate Council input and consultation, including consultation with the broader community<sup>41</sup>

In response to BCC's concerns regarding the scope of the Authority's powers and functions under the bill, the department stated that '[t]he core functions of the Authority do not include land use planning and do not remove planning power from BCC.'<sup>42</sup> The department emphasised that the purpose of the

<sup>34</sup> Brisbane City Council, submission 2, Attachment A, p 5.

<sup>35</sup> Brisbane City Council, submission 2, Attachment A, p 3.

<sup>36</sup> Brisbane City Council, submission 2, Attachment A, p 3.

<sup>37</sup> Brisbane City Council, submission 2, Attachment A, p 4.

<sup>38</sup> Brisbane City Council, submission 2, Attachment A, p 1.

<sup>39</sup> Brisbane City Council, submission 2, Attachment A, p 11.

<sup>40</sup> Brisbane City Council, submission 2, Attachment A, p 6.

<sup>41</sup> Brisbane City Council, submission 2, Attachment A, p 6.

<sup>42</sup> Department of Infrastructure, Local Government and Planning, correspondence received 28 October 2016, p 9.

bill would be to establish the Authority to facilitate economic development and deliver the CRR project, and not to establish the Authority as a statutory planning entity or to give the Authority the power to declare the CRR PDA.<sup>43</sup> In this regard, the department advised that existing legislative mechanisms would be used for planning matters:

*The Bill has been drafted to use the existing planning authority of the Queensland Government. The existing mechanisms of the Economic Development Act 2012 will be utilised to ensure that the transformational aspects of the project are realised.*<sup>44</sup>

BCC also sought the ability to provide feedback to the Authority 'to determine the PDA boundary, development scheme and associated infrastructure planning and an agreed framework to apply to the proposed CRR PDA'. The department responded:

*The existing mechanisms of the Economic Development Act 2012 require that MEDQ [Minister for Economic Development Queensland] consults with the relevant local government when preparing a development scheme for the purpose of a priority development area. Part of the statutory requirements for the development scheme include that it must include a land use plan (which regulates development in the area), a plan for infrastructure in the area and an implementation strategy.*<sup>45</sup>

In regard to BCC's comments that the Authority's operations would have 'no boundaries, the department disagreed:

*The Authority does not have unlimited boundaries. The Authority is limited to its functions which are set out in clause 12 of the Bill.*<sup>46</sup>

BCC also expressed concern about the boundaries of the CRR PDA. The committee notes the department's advice that the boundaries of any CRR PDA have not yet been determined by the MEDQ. The department advised that consultation with key stakeholders, including Brisbane City Council, will be undertaken prior to that.<sup>47</sup> The department, however, did provide some clarification regarding the expectations for the process going forward:

*The Authority, once it is established, is expected to provide advice to MEDQ about any proposed Cross River Rail priority development area, but the decision about the declaration of any Cross River Rail priority development area is ultimately one for MEDQ under the Economic Development Act 2012 and the processes for making such declaration are not affected by this Bill.*<sup>48</sup>

Given the reasons outlined above, the department advised that BCC's proposed amendments were not supported:

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<sup>43</sup> Brisbane City Council, submission 2, letter, p 1; Department of Infrastructure, Local Government and Planning, correspondence received 28 October 2016, pp 5-6.

<sup>44</sup> Department of Infrastructure, Local Government and Planning, correspondence received 28 October 2016, p 5.

<sup>45</sup> Department of Infrastructure, Local Government and Planning, correspondence received 28 October 2016, p 5.

<sup>46</sup> Department of Infrastructure, Local Government and Planning, correspondence received 28 October 2016, pp 9-10.

<sup>47</sup> Department of Infrastructure, Local Government and Planning, public briefing transcript, Brisbane, 31 October 2016, p 5.

<sup>48</sup> Department of Infrastructure, Local Government and Planning, correspondence received 28 October 2016, p 10.

*Any Cross River Rail priority development area will therefore not be declared under the Bill, but rather under the existing provisions of the Economic Development Act 2012. This includes the existing requirements to consult under that Act. ...*

*Given the existing mechanisms and process in place under the Economic Development Act 2012, the proposed amendments are not supported.<sup>49</sup>*

#### *Brisbane Metro Subway System*

As noted above, one of the Authority's functions would include facilitating the efficient delivery of the Cross River Rail project and any prescribed 'transport-related projects'.<sup>50</sup> The department advised:

*Clause 7 of the bill defines a transport related project as a transport infrastructure project in South-East Queensland which is not in a PDA or not located within PDA associated land but which the minister is satisfied relates to the operation of rail transport infrastructure as a result of the Cross River Rail project.<sup>51</sup>*

BCC sought an amendment to the bill that would exclude the Brisbane Metro Subway System (BMSS) project from being 'declared as a transport-related project under the control of the CRRDA'. BCC provided the following reasons for the proposed amendment:

*The CRR and the BMSS transport projects are both critical to sustain the growth and development of the city. The benefits to the city would be substantial if the CRR and the BMSS coexisted and functioned as an integrated system. Council requests details of how it is intended to achieve the integration of the projects and for Council to continue to manage the BMSS.*

*Council urgently requests that the CRRDA's powers and functions be amended in the Bill to exclude the BMSS from being declared as a transport-related project under the control of the CRRDA. The Bill should be amended to ensure that it does not compromise the BMSS project and any other Council public transport, road or active transport that may be impacted by either the CRR project or the CRR PDA. This could be in terms of physical impact on land, access or a reduction in CRR patronage or the potential reduction in the value sharing opportunities of development under the CRR PDA.*

*It is recognised that there is a role for a specific authority to implement the delivery of a defined transport infrastructure project. It is also recognised that there is a nexus between the CRR project and the associated transport planning. Council considers that an integrated CRR project and BMSS project would represent a transformational change for the city. Both projects are critical to the economic advancement of the city. The challenge for both Council and the Queensland Government is how the projects can be delivered as an integrated project and how the CRRDA and Council can coexist. The mechanism of how these two projects are realised is in a revised CRRDA Bill that allows for both to coexist and complement each other.<sup>52</sup>*

The department responded to BCC's concerns regarding the BMSS and Council's related proposed amendment to exclude BMSS from the Authority's functions under clause 7:

*The Authority's functions [include facilitating] the efficient delivery of the Cross River Rail project and any prescribed 'transport-related projects' (clause 12(1)(b)). Clause 7 of the Bill defines a 'transport related project'. For a project to satisfy that definition and be able to be*

<sup>49</sup> Department of Infrastructure, Local Government and Planning, correspondence received 28 October 2016, p 6.

<sup>50</sup> Clause 12(1)(b).

<sup>51</sup> Department of Infrastructure, Local Government and Planning, public briefing transcript, 31 October 2016, Brisbane, p 1.

<sup>52</sup> Brisbane City Council, submission 2, Attachment A, p 2.

*prescribed in a regulation, the responsible Minister must be satisfied that the project 'relates to the operation of rail transport infrastructure provided, or to be provided, as a result of the cross river rail project'.*

*In the absence of a business case for the Brisbane Metro Subway System, it is unclear how the proposed BMSS project will relate to the operation of the rail network, so its relationship to the Cross River Rail project is not yet clear. The Queensland Government and BCC will work to further investigate the interface between the Cross River Rail project and the BMSS project.*

*Part of the Authority's functions, once it is established, will be to recommend to the responsible Minister which projects the Authority believes it is best placed to deliver. Consequently, it is not possible to provide further information in advance of the Authority being established.<sup>53</sup>*

#### Commercial entity

Clause 13 of the bill states 'that the Authority must carry out its functions as a commercial enterprise'.<sup>54</sup> The explanatory notes advise that '[t]his is a common structure for government owned corporations and statutory bodies within the energy, water and transport sectors.'<sup>55</sup>

BCC was concerned that the status of the Authority as a commercial entity may lead to a conflict of interest which could impact on planning outcomes and community expectations.

*The community have an expectation that governments of all levels will balance competing interests and resolve in favour of a position which on balance benefits the majority of the community. The CRRDA will make no such considerations, as acting commercially will be a legislative requirement.<sup>56</sup>*

BCC stated further:

*The Bill appears to establish a framework which allows the CRRDA to be at risk of a significant conflict of interest, as the CRRDA will act as a delegate of MEDQ in respect of planning matters affecting the broadly defined CRR project. Council strongly objects to the principle of a commercial entity with no accountability to the community, having the ability to make decisions on an unspecified corridor, which may or may not be related to the CRR project, at the expense of the remainder of the city.*

*The commercial entity will be able to operate without having any regard to planning outcomes, community expectations or impacts on parts of the city which are external to the undefined CRR PDA. The Bill enables a commercial entity to expedite the delivery of an infrastructure project and to derive funding for that project by indiscriminately manipulating land use planning on a broad scale. This is a high risk funding approach, as it makes a trade off between the city's planning and profit.<sup>57</sup>*

In this regard, BCC sought an amendment to the bill to 'ensure that the CRRDA will not have broad powers over an undefined but significant portion of the city' so that it would be 'subject to the checks and balances the community expect'.<sup>58</sup> The department advised that the amendment was not supported because the bill and ED Act provide for 'checks and balances':

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<sup>53</sup> Department of Infrastructure, Local Government and Planning, correspondence received 28 October 2016, pp 8-9.

<sup>54</sup> Explanatory notes, p 11.

<sup>55</sup> Explanatory notes, p 11.

<sup>56</sup> Brisbane City Council, submission 2, Attachment A, p 1.

<sup>57</sup> Brisbane City Council, submission 2, Attachment A, p 6.

<sup>58</sup> Brisbane City Council, submission 2, Attachment A, p 10.

*The Authority's functions are bounded by a Cross River Rail priority development area and the prescribed 'transport-related projects'.*

*Any Cross River Rail priority development area must be declared by MEDQ under the existing provisions of the Economic Development Act 2012. The intent is that the planning and assessment powers would remain with Economic Development Queensland or another assessment agency and not be delegated to the Authority.*

*The 'transport-related projects' must be prescribed by regulation, which is a function carried out by a government agency and subject to Parliamentary disqualification.<sup>59</sup>*

The department further advised:

*The Bill does not remove the ability for MEDQ to delegate MEDQ powers to councils under the existing provisions of the Economic Development Act 2012. Clause 78 of the Bill adds the Authority to the list of entities that MEDQ can delegate its powers to.*

*This does not mean that all of MEDQ's powers must be delegated to the Authority. The intent is that the planning and assessment powers would remain with Economic Development Queensland or another assessment agency and not be delegated to the Authority.*

*In addition, the Economic Development Act 2012 requires MEDQ to consult with the relevant local government in preparing a development scheme for a priority development area.<sup>60</sup>*

#### *Compliance with Council standards*

In relation to PDAs and clause 3 of the bill that would provide for the continuation of the Authority until the cross river rail project and any transport-related projects were completed and the role of BCC in maintaining the asset in the longer term, BCC recommended that the bill be amended to identify the ultimate asset owner for various infrastructure types.<sup>61</sup> BCC stated:

*Where council is identified as the ultimate asset owner, CRRDA should be required to construct those assets in compliance with Council standards.<sup>62</sup>*

In terms of its statements regarding constructing assets to Council standards, BCC advised:

*Council's experience with the existing PDAs is that EDQ does not require assets to comply with Council's standards, or other acceptable standards. As a result, Council is required to accept transfer of assets which have associated higher maintenance costs, less life cycle, higher replacement costs and are not fit for purpose.<sup>63</sup>*

The department did not support the amendment sought by Council in relation to asset standards but advised:

*It would be expected that the Authority will design and construct assets to the standards of the ultimate asset owners.<sup>64</sup>*

#### *Powers of the Authority*

Clause 14 of the bill sets out the powers that the Authority will have. The explanatory notes advise:

<sup>59</sup> Department of Infrastructure, Local Government and Planning, correspondence received 28 October 2016, pp 12-13.

<sup>60</sup> Department of Infrastructure, Local Government and Planning, correspondence received 28 October 2016, pp 11-12.

<sup>61</sup> Brisbane City Council, submission 2, Attachment A, p 8.

<sup>62</sup> Brisbane City Council, submission 2, Attachment A, p 8.

<sup>63</sup> Brisbane City Council, submission 2, Attachment A, p 8.

<sup>64</sup> Department of Infrastructure, Local Government and Planning, correspondence received 28 October 2016, p 6.

*This is a standard provision for the necessary powers for an independent statutory body to enable it to perform its functions effectively. These powers are necessary for the Authority to fulfil its duties and core roles of building a tunnel and realising the city building objectives for the Cross River Rail project. The intent is that these powers will be consistent with the Queensland Government's intentions for the Authority whilst maintaining transparency and accountability.*

*The Authority will have all of the powers of an individual and may, for example, enter into contracts or agreements, deal in land and other property, and charge government agencies for its services.*

*The Authority will also have land acquisition powers under the Acquisition of Lands Act 1967...*

*These powers are based on section 20(1) and (2) of the Building Queensland Act 2015 and section 53(5) and (7) of the Financial Accountability Act 2009.<sup>65</sup>*

#### *Acquisition of land*

Clause 18 provides for the Authority to deal in land or other property. Clause 19 states when the Authority may deal in land or other property. Clause 20 sets out when the Authority may take land under the *Acquisition of Land Act 1967* (ALA).<sup>66</sup> In regard to Clause 20, the explanatory notes state:

*While most of the Cross River Rail project will be undertaken on State-owned land, there may be a need to acquire property rights for works underground, and to create economic development precincts for the major clusters to be commercially viable. The acquisition power in this clause is limited to land that is required for the Cross River Rail project or an associated prescribed 'transport-related project'. However, if it is intended to use this power for a transport-related project, the regulation must specify this. This ensures that this power is not automatically triggered when a transport-related project is prescribed in the regulation, since it may not be required.*

*This clause also states that State land can be acquired by the Authority. In this case, the Acquisition of Land Act 1967 provisions apply as if the lease or other interest is freehold land. State land is defined in the Dictionary to this Bill to be land under the Land Act 1994 that is not freehold land.*

*This clause makes the Authority a 'constructing authority' for the purposes of the Acquisition of Land Act 1967. This means that the process for acquiring land is under that Act, with the associated powers and obligations.*

*This clause is modelled on sections 25 and 26 of the Transport Planning and Coordination Act 1994 and provides similar powers for acquiring land.<sup>67</sup>*

BCC expressed several concerns regarding the bill's provision for the Authority to have acquisition of land powers, including the potential for the Authority to 'bank' land for future sale and development purposes unrelated to the CRR project, to deny Council access to the busway asset and BMSS project, and that land resumed or owned by the Authority would be exempt from rating:

*The CRRDA [the Authority] will be able to use acquisition powers to take additional land to what is required for the project without the permission of the owner or the requirement that the remnant land be rendered useless. This allows the ability for significant land banking for*

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<sup>65</sup> Explanatory notes, pp 11-12.

<sup>66</sup> Explanatory notes, p 13.

<sup>67</sup> Explanatory notes, pp 13-14.

*future sale and development for purposes unrelated to the project. The CRRDA will be able to resume land solely for the purposes of disposing of it.*

*The CRRDA power may potentially be used to deny Council access to the busway asset, on State-owned land, for the BMSS project.*

*Land resumed or owned by the CRRDA would be exempt from rating.<sup>68</sup>*

In this regard, BCC proposed several recommendations to the bill:

*The ability of CRRDA to indiscriminately acquire property to create development precincts is not supported by Council as it does not offer any requirement to align strategically with City Plan. Furthermore the Bill provides the opportunity for a significant conflict of interest to occur through the combination of allowing the CRRDA to (1) act as a delegate of MEDQ, (2) have extensive acquisition powers and (3) act as a commercial development entity. Council does not support this combination of powers and its widespread and undefined application.*

*Council seeks to have the Bill amended to ensure that CRRDA will not have broad powers which have the potential to have far reaching consequences for the city.*

*The amendments to the Bill should ensure compliance with standard resumption procedures contained in the Land Acquisition Act 1967 [sic] and the requirement for acquisition to relate only to a redefined CRR project i.e. not extended to sites extraneous to the CRR facility.*

*Council seeks to have the Bill amended to ensure that any land owned by the CRRDA which is not directly related to the CRR facility is to be considered as rateable land.*

*Council seeks to have the Bill amended to ensure that CRRDA does not have the ability to impact adversely on the delivery of Council services and infrastructure, particularly where it relates to Council owned land or land Council holds in trust.<sup>69</sup>*

The department provided the following responses to BCC's issues regarding provisions that would provide the acquisition powers to the Authority and advised that it did not support the proposed amendments:

*The power to take land is based on existing acquisition powers under the Transport Planning and Coordination Act 1994. These mechanisms require the Authority to comply with the usual processes and compensation provisions of the Acquisition of Land Act 1967 so further amendment to the Bill is not required for this purpose. In addition, the Authority may only take for the Cross River Rail project, or a regulation specifically permits compulsory acquisition for a transport-related project. Consequently, the Authority does not have the ability to indiscriminately acquire property.*

*The Authority's ability to commercially purchase land is limited to its functions under the Bill. Any Cross River Rail priority development area must be declared by MEDQ under the existing provisions of the Economic Development Act 2012. The intent is that the planning and assessment powers would remain with Economic Development Queensland or another assessment agency and not be delegated to the Authority.*

*The Bill does not change which land is rateable under the City of Brisbane Act 2010. Section 95 of the City of Brisbane Act 2010 excludes land that is occupied by the State or a government entity from being rateable, but this is not affected by whether or not that land is owned by the Authority.*

<sup>68</sup> Brisbane City Council, submission 2, Attachment A, p 11.

<sup>69</sup> Brisbane City Council, submission 2, Attachment A, pp 11-12.

*The proposed amendment is not supported as it may prohibit the efficient delivery of CRR if council owned land or land a council owns in trust is not able to be impacted. Any impacts would need to be managed subject to existing legal requirements.*<sup>70</sup>

### **Cross River Rail Delivery Board**

The bill proposes to establish a board of management for the Authority.<sup>71</sup>

The Cross River Rail Delivery Board (the Board) would have up to ten members. The four permanent members of the Board would be government employees – the chief executive or a senior executive of the departments that administer the following Acts: the *Auditor-General Act 2009*, the *Financial Accountability Act 2009*, the *Rail Safety National Law (Queensland) Act 2016* and the proposed *Cross River Rail Delivery Authority Act*. The remaining members would be appointed by the Governor in Council on the recommendation of the Minister. In recommending a person for appointment, the Minister must be satisfied the person has qualifications or experience in a field relevant to a function of the Authority.<sup>72</sup>

The department advised the committee that '[t]he governance procedures such as how the board conducts its business and voting procedures are all fairly standard and ... are modelled on the Building Queensland Act.'<sup>73</sup> They further advised, '[i]n the interests of independence, the bill ... provides that for a quorum to be present the majority of people present must be non-government members.'<sup>74</sup>

### **Chief executive officer and other staff**

The Board must, in consultation with the Minister, appoint a chief executive officer (CEO).<sup>75</sup> The committee sought information about the likely salary of the CEO and were advised that the salary would be set by the Board. Details about the CEO's remuneration are to be included in the Authority's annual report.<sup>76</sup>

The Authority may employ staff or may, with the agreement of the chief executive of a government agency, arrange for the services of officers or employees of the agency to be made available to the Authority.<sup>77</sup> The staff employed by the Authority would be appointed under the proposed Act, not the *Public Service Act 2008*.<sup>78</sup> There would be no limit on the number of employees that the Authority may employ.<sup>79</sup>

The bill provides that it is an offence for the chief executive officer, a member of the Authority's staff, a contractor as well as a board members to fail to act honestly in the performance of the person's functions and the exercise of the person's powers under the proposed Act. The maximum penalty for breaching this clause is 200 penalty units (\$24,380.00).<sup>80</sup> It is also an offence for a person who is, or

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<sup>70</sup> Department of Infrastructure, Local Government and Planning, correspondence received 28 October 2016, pp 13-14.

<sup>71</sup> Clause 30.

<sup>72</sup> Clause 33.

<sup>73</sup> Public briefing transcript, Brisbane, 31 October 2016, p 2.

<sup>74</sup> Public briefing transcript, Brisbane, 31 October 2016, p 2.

<sup>75</sup> Clause 49.

<sup>76</sup> Department of Infrastructure, Local Government and Planning, correspondence received 2 November 2016, p 1.

<sup>77</sup> Clauses 57(1), 58.

<sup>78</sup> Clause 57(2).

<sup>79</sup> Department of Infrastructure, Local Government and Planning, public briefing transcript, Brisbane, 31 October 2016, p 5.

<sup>80</sup> Clause 62. The value of a penalty unit is \$121.90: *Penalties and Sentences Act 1992*, ss 5, 5A; *Penalties and Sentences Regulation 2015*, s 3.



has been, a board member, the chief executive officer, a member of the Authority's staff or a contractor of the Authority to disclose confidential information obtained in administering or performing a function under the proposed Act, except in specified circumstances. The maximum penalty for breaching this provision is 200 penalty units (\$24,380).<sup>81</sup>

## 2.3 Cross River Rail Delivery Fund

The bill proposes to establish the Cross River Rail Delivery Fund.<sup>82</sup>

*This fund is established to basically ensure that income generated by the authority remains reinvested in the project itself. Essentially, any money received by the authority is paid into the fund and disbursements can only then be made from the fund for specific purposes—things such as providing rail infrastructure, running of the authority itself and purchasing land. The only exception to this is that the Deputy Premier and the Treasurer may direct that funds are paid out of the fund into consolidated revenue.*<sup>83</sup>

The committee was advised that the fund would come under normal auditing processes.<sup>84</sup>

## 2.4 Other matters

### **Heritage**

If development for the CRR project or a transport-related project is to be carried out in relation to a Queensland heritage place under the *Queensland Heritage Act 1992*, clause 69 of the bill provides it would be assessed under section 71 (Development by the State) of the *Queensland Heritage Act 1992* 'and not through the usual Planning Act provisions for assessable development'.<sup>85</sup> With respect to this, the department advised:

*The provisions of the bill do not change the status quo for Queensland heritage places. Under clause 69 of the bill they would still require assessment by the Queensland Heritage Council. It is just that it is applying the state provisions to the authority because the authority has the rights and obligations of the state.*<sup>86</sup>

### **Funding for the project**

The committee was interested in how the CRR project would be funded and the consultation that would occur around funding.<sup>87</sup>

The department advised that it could provide little detail about funding:

*The funding for the project is still obviously a matter for the consideration of government. It is into an area that we really cannot comment on. The one thing that I would say, though, is that part of the rationale for the way this authority is being established is to try, where possible, to drive as much commerciality into the development so that the revenues from the development can start to offset some of the cost to the public purse to deliver the project. The total funding package is obviously still a matter for policy consideration by the government.*

<sup>81</sup> Clause 64.

<sup>82</sup> Clause 59.

<sup>83</sup> Department of Infrastructure, Local Government and Planning, public briefing transcript, Brisbane, 31 October 2016, p 2.

<sup>84</sup> Public briefing transcript, Brisbane, 31 October 2016, p 3.

<sup>85</sup> Cross River Rail Delivery Authority Bill 2016, explanatory notes, p 27; clause 69.

<sup>86</sup> Public briefing transcript, Brisbane, 31 October 2016, p 6.

<sup>87</sup> Public briefing transcript, Brisbane, 31 October 2016, pp 3-4.

*Chair, if you will accept that, that is probably about as much as I can say on that at this point in time.<sup>88</sup>*

### Value capture

‘Value capture’ is a potential source of funding for the CRR project. ‘Value capture’ or ‘value sharing’ is a funding mechanism that can be used in new infrastructure projects when those projects increase the value of property in their surrounding area. It is also known as ‘beneficiary pays’ funding.<sup>89</sup>

The Property Council of Australia (PCA) expressed concern about a value capturing levy being used to help finance the CRR project. The PCA submitted:

*Cross River Rail offers potential for the Government to partner with property owners around proposed stations and along the proposed corridor to generate additional urban renewal, uplift and funding opportunities. However, poorly designed ‘value capture’ levies, based on perceived increases in property values, pose a significant economic risk.*

*It can be very difficult to quantify any increase in property value that has occurred from a new piece of infrastructure. For instance, Cross River Rail could increase property values not just in the local vicinity, but all over the rail network and even for primary producers and mining operations hundreds of kilometres away from the new line. An increase in land value also doesn’t necessarily mean that the owner has greater income to pay an additional new tax.*

*It should be noted that if Cross River Rail causes property values to increase, as expected by the State Government, then the Government will receive a financial windfall from this increase through land tax and stamp duty receipts. It is also likely that Brisbane City Council will also receive an increase in rates revenue through higher property values.*

*The Government should seek innovative uses of existing revenue streams prior to developing new bespoke taxing models to finance the Cross River Rail project. The Property Council would strongly encourage the Cross River Rail Delivery Authority to investigate a tax increment financing model which would hypothecate this future tax uplift to the initial cost of project delivery.<sup>90</sup>*

The department advised that the Government has not committed to value capturing in relation to the CRR project:

*It is important to note that the Queensland government has not made any decisions yet in relation to the concept of value capture but, under the bill, one of the authority’s functions will be to make recommendations to the government with respect to value capture options. It is anticipated that the authority, and presumably the state, will consult with relevant stakeholders in determining what is the best option moving forward in terms of value capture.<sup>91</sup>*

Value capturing powers have been used in PDAs including Bowen Hills, Caloundra South, Yarrabilba and Flagstone.<sup>92</sup> The department cited the example of the Bowen Hills PDA to explain when consultation about value capture would occur:

*There is a statutory obligation in the Economic Development Act for EDQ to consult, to publicly advertise a draft development scheme. When a priority development area is declared an*

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<sup>88</sup> Public briefing transcript, Brisbane, 31 October 2016, p 4.

<sup>89</sup> Infrastructure Victoria, *Value Capture – Options, Challenges and Opportunities for Victoria: Policy Paper*, October 2016, p 4.

<sup>90</sup> Property Council of Australia, submission 1, p 1.

<sup>91</sup> Public briefing transcript, Brisbane, 31 October 2016, p 3. See also Department of Infrastructure, Local Government and Planning, correspondence received 28 October 2016, p 4.

<sup>92</sup> Public briefing transcript, Brisbane, 31 October 2016, p 4.

*interim land use plan is automatically put in place. We have 12 months to prepare a development scheme in that time. We have to prepare a draft development scheme, consult with local government and interested stakeholders and then the consultation process is at least 30 business days for more consultation and engagement. There is the informal consultation leading to the preparation of a draft scheme, the formal consultation for the 30 days to take on board the comments and then finalise the development scheme.*

...

*I take the example of the Bowen Hills priority development area where there is a value capture mechanism embedded in that development scheme. They are embedded in the development scheme itself. It is the consultation with stakeholders leading to the draft and the 30 business days. The formula for value capture in that priority development area is in the development scheme and that was very clear for everybody to see at the time.<sup>93</sup>*

The department confirmed that residents outside a CRR PDA could not be subject to 'new rates, taxes and charges by the delivery Authority under the delegated powers from the Minister for Economic Development'.<sup>94</sup> In response to a question about appeal rights for property owners who receive a benefit from the CRR infrastructure but are unhappy with the rate of charges or new taxes, the department advised that there are no appeal rights under the Economic Development Act.<sup>95</sup>

The explanatory notes state the Queensland Government intends to conduct community consultation prior to developing any value sharing arrangements.<sup>96</sup>

#### Budget allocation

The committee noted that \$50 million was allocated in the 2016-17 budget for matters relating to the CRR project including the establishment of the Authority:

- \$11 million for employee expenses
- \$30 million for contractors and consultants
- \$9 million for other expenses.<sup>97</sup>

In answer to a request from the committee for a further breakdown of these figures, the Director-General of the department advised:

*The allocation of operating costs is still evolving and annual operating budgets must be developed by the Authority (once it is established) and approved by the Board and the Minister. The mention of a further breakdown made by Mr Nicholls in Committee referred to internal draft calculations prepared by the Cross River Rail project team to inform discussions with the Authority and the Board in due course. To this end, the draft costings may ultimately form part of a briefing, opinion or advice to the responsible Minister.*

*Additionally, the department is in discussion with the Australian Government regarding its recent announcement of a \$10 million contribution to the project, which will impact on the budget allocations. It may be the case that the eventual approved budget varies substantially from the drafts prepared by officers to date. Accordingly, because of the draft nature of this information, I do not believe it appropriate to provide to the Committee at this point.<sup>98</sup>*

<sup>93</sup> Public briefing transcript, Brisbane, 31 October 2016, p 4.

<sup>94</sup> Public briefing transcript, Brisbane, 31 October 2016, pp 9-10.

<sup>95</sup> Public briefing transcript, Brisbane, 31 October 2016, p 4.

<sup>96</sup> Cross River Rail Delivery Authority Bill 2016, explanatory notes, p 6.

<sup>97</sup> Cross River Rail Delivery Authority Bill 2016, explanatory notes, p 3.

<sup>98</sup> Department of Infrastructure, Local Government and Planning, correspondence dated 15 November 2016.

### ***Delegations under the Economic Development Act 2012***

The bill proposes to amend the *Economic Development Act 2012* (ED Act) to enable the Minister for Economic Development Queensland (MEDQ) to delegate any of its functions or powers under the ED Act to the Authority. These may be subdelegated to certain persons.<sup>99</sup>

In answer to a question whether the powers would include the ability to impose special charges and levies, the department advised that, in general, the delegated powers would be administrative in nature.<sup>100</sup>

*I think that it would be highly unlikely that MEDQ would delegate the power to impose taxes, rates and charges down to a staff member of the authority. She would more likely delegate that to the authority themselves, which would then operate through its board.*

*In addition, under section 170 of the Economic Development Act, MEDQ, as the corporation sole, can also give directions to how their delegate must exercise their powers and functions under the Economic Development Act.*

...

*One of the things to also keep in mind is that it is anticipated that MEDQ will remain as the planning authority. We are unlikely to see powers delegated from MEDQ to the authority with respect to the planning functions.<sup>101</sup>*

#### Committee comment

The Government members of the committee support the establishment of the CRR Delivery Authority but the non-Government members do not support it. As discussed further below, the committee acknowledges the concerns of stakeholders but considers that amendment to the bill is not required.

Some of the issues raised by submitters fall outside the scope of the bill. With respect to the concerns related to PDAs, we note that the department has advised that consultation with key stakeholders, including Brisbane City Council, will be undertaken prior to the declaration of a CRR PDA. We also note that the declaration of a CRR PDA will be by regulation which is subject to disallowance by the Queensland Parliament.

We encourage the department and the Authority to consult with stakeholders such as Brisbane City Council and Queensland Urban Utilities as the CRR project progresses.

#### *Scope of the Authority's functions and powers*

The committee notes that BCC supports the cross river rail project but that it raised several concerns regarding the proposed functions of the Cross River Rail Development Authority and about the broad powers of the Authority, and suggested amendments in relation to these concerns.

In regard to specific concerns regarding the scope of the Authority's powers, the committee is satisfied with the department's response that the Authority is limited to its functions under clause 12 of the bill and that the role of the Authority is not to be a planning entity or to establish the CRR PDA, but to facilitate economic development and deliver the CRR project. Further, the committee also recognises that the bill does not propose to introduce any new powers and functions but that it would combine them within a single statutory body. As the Hon Jackie Trad, Deputy Premier, Minister for Infrastructure, Local Government and Planning and Minister for Trade and Investment, stated in her introductory speech on the bill:

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<sup>99</sup> Clause 78.

<sup>100</sup> Public briefing transcript, Brisbane, 31 October 2016, p 5.

<sup>101</sup> Public briefing transcript, Brisbane, 31 October 2016, p 5.

*The authority's powers are not new powers. These powers are already carried out by a number of agencies across state government. However, by combining these powers into a single independent statutory body, the authority will have the necessary support to deliver both the below-ground infrastructure and the above-ground development required to fully realise this project's city transformation opportunities.*<sup>102</sup>

#### *Brisbane Metro Subway System*

Brisbane City Council recommended that the Brisbane Metro Subway System project be excluded from being declared as a 'transport-related project' under the control of the Authority. The committee notes that, in order to prescribe a 'transport-related project' by regulation, the Minister must be satisfied that the project in question relates to the cross river rail project. The committee notes that as a transport-related project is prescribed by regulation, it will be subject to Parliamentary disqualification. This provides further opportunity for consideration by the Parliament. Finally, the committee notes the department's advice that it is unable to provide further information at this time because of the absence of a business case for the BMSS project but that the Queensland Government will work with BCC to 'further investigate the interface between the Cross River Rail project and the BMSS project.'<sup>103</sup>

#### *Commercial entity*

The committee notes Brisbane City Council's concerns regarding the status of the Authority as a commercial entity but is satisfied with the department's advice that the bill and the *Economic Development Act 2012* would provide the 'checks and balances' needed to address community issues and any conflict of interest.

#### *Compliance with Council standards*

The committee notes the department's response that it expects the Authority will construct the asset to the standards of the ultimate asset owner.

#### *Acquisition of land*

The committee is satisfied with the department's response that the Authority 'may only take for the Cross River Rail project, or a regulation specifically permits compulsory acquisition for a transport-related project' and therefore 'does not have the ability to indiscriminately acquire property.'<sup>104</sup>

<sup>102</sup> Queensland Parliament, Record of Proceedings, 11 October 2016, p 3678.

<sup>103</sup> Department of Infrastructure, Local Government and Planning, correspondence received 28 October 2016, pp 8-9.

<sup>104</sup> Department of Infrastructure, Local Government and Planning, correspondence received 28 October 2016, pp 13-14.

### **3 Compliance with the *Legislative Standards Act 1992***

#### **Fundamental legislative principles**

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and the
- the institution of parliament.

The committee examined the application of FLPs to the bill.

#### **Potential FLP issues**

The committee identified potential breaches of fundamental principles in clauses 20, 21, 63, 66, 67, 68 and 70. The bill also includes three offence provisions which are set out at Annexure A.

#### ***Rights and liberties of individuals***

##### *Clauses 63 and 70*

Section 4(2)(a) of the LSA provides that legislation has sufficient regard to rights and liberties of individuals.

##### *Summary of provisions*

A person will be disqualified from becoming (or continuing as) the CEO under proposed s 51(a) if the person has a (non-spent) conviction for an indictable offence. If a CEO is convicted of an indictable offence while in office, they vacate their position automatically under s 54(c).

Where an appointed board member or CEO is convicted of an indictable offence during the term of their appointment they must, absent reasonable excuse, give immediate notice of their conviction, including details of the offence and any sentence imposed, to the Minister under s 63. If they fail, without excuse, to give the required notice, they may be subject to a maximum penalty of 100 penalty units (\$12,190)(s 63(2)).

Proposed s 70 will allow a relevant criminal history to be independently verified by the Minister, by permitting the Minister to obtain from the Police Commissioner a written report about the criminal history of a potential or serving chief executive officer (CEO) or appointed board member, including a brief description of the circumstances of a conviction mentioned in the criminal history.

Proposed s 70 incorporates three safeguards for a person’s privacy in this situation:

1. The Minister can request a criminal history report only with the express written consent of the person about whom the history relates (s 70(2))
2. The report must be destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested (s 70(5))
3. The report cannot include information about spent convictions (s 70(6)).

##### *Potential FLP issues*

The provision to the Minister of the criminal history of a potential or serving CEO or appointed board member, as well as the requirement for a serving CEO or board member to disclose indictable offence convictions imposed while they are in office, both raise issues regarding that person’s right to privacy in respect of their personal information.

*Committee comment*

The committee is satisfied that, given the above safeguards and the fact that any person who does not want their criminal history to be accessed can simply refuse to provide consent and voluntarily vacate their position or withdraw their application, the FLP concerns about a person's privacy have been appropriately addressed.

*Clauses 66, 67 and 68*

Section 4(3)(d) of the LSA provides that whether legislation has sufficient regard to rights and liberties of individuals depends on consideration, for example, of the legislation reversing the onus of proof in criminal proceedings without adequate justification.

*Summary of provisions*

Part 7, Division 2 introduces proposed sections 66-68 which serve as *evidentiary provisions* [matters taken to be proved, or matters deemed to exist, unless evidence proves otherwise].

Section 66 states that, in a proceeding, the appointment under the Act of an appointed board member or the CEO, or the authority of a board member, the CEO, or an Authority employee or contractor to do anything under the Act, *must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it*.

Section 67 states that a signature purporting to be the signature of a board member or the CEO is evidence of the signature it purports to be.

Section 68(1) provides that, in a proceeding, a certificate purporting to be that of the chairperson stating any of the following matters, is evidence of the matter:

- (a) A stated document is an appointment made under the Act;
- (b) A stated document is a document made by, or given to, the Authority;
- (c) A stated document is a copy of a document in (a) or (b).

Section 68(2) provides that 'A statement in a complaint for an offence against this Act that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.' This is relevant to prosecutions under the Act because under s 65, an offence against the Act is a summary offence and a proceeding for an offence must start within 1 year after the commission of the offence; or within 2 years after the commission of the offence but within 6 months after the offence comes to the complainant's knowledge.

*Potential FLP issues*

Legislation should not reverse the onus of proof in criminal matters. The former Scrutiny of Legislation Committee (SLC) expressed reservations about provisions stating a thing to be sufficient evidence of a matter or presuming a state of affairs to exist, commenting that evidentiary provisions affect the right of individuals to a fair trial and just legal process by assisting the prosecution in the discharge of its legal or persuasive onus.<sup>105</sup>

*Certificate or other documentary evidence*

It is fairly common for legislation to provide that a certificate signed by a person administering a law is evidence of a fact stated in the certificate. These evidentiary aids enable an administering authority to put evidence before Courts about a range of basic non-contentious matters without the need to call witnesses. The SLC generally considered provisions about evidentiary certificates as being unexceptional, provided the matters to which the certificates related were non-contentious and the certificates were treated merely as evidence (meaning a defendant could still challenge the matters

<sup>105</sup> See OQPC Handbook, *Principles of Good Legislation – Reversal of Onus of Proof*, pp 14-15.

stated in the certificate if they wished) and not as being conclusive proof of the fact stated, or as being determinative of the ultimate issue in question.

The explanatory notes assert the purpose for the evidentiary provisions in sections 66-68 as being:

*[To] ensure that legal proceedings are not delayed by requiring proof of matters which are not in contention.*

*Committee comment*

Noting the non-contentious nature of the matters presumed as facts because of the operation of sections 66-68, and the fact that, should one of the presumed matters be in dispute, there is still scope for the defence to rebut the 'presumed' facts by adducing its own evidence to the contrary, the committee considers that on balance the use of evidentiary provisions in the bill is arguably justified for administrative expedience.

*Clauses 20 and 61*

Section 4(3)(i) of the LSA provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation provides for the compulsory acquisition of property only with fair compensation.

*Summary of provisions*

Clause 20 allows the Authority to take land that is required for a cross river rail purpose in relation to the cross river rail project or a transport-related project prescribed by regulation. Clause 21 applies where the Authority is taking part of any land under s 20 and the taking of that land will leave the land owner with one or more parcels of land. Clause 21 allows the Authority to, with the Minister's approval, take all or part of the additional land parcels. Pursuant to s 20(4)(a), for the taking of land under s 20, the Authority is deemed to be a 'constructing authority' under the *Acquisition of Land Act 1967*.

Part 4 of the *Acquisition of Land Act 1967* (ALA) provides for eligibility for compensation for persons whose interest in a property has been adversely affected by its resumption or by the Authority's taking of an easement over the property. Section 20 of the ALA sets out criteria for the assessment of the quantum of compensation to be paid, including that compensation shall be assessed according to: the value of the estate or interest of the claimant in the land on the date it was taken, any damage caused by the severing of the land taken from the other land of the claimant, and the claimant's costs attributable to disturbance (such as the cost of new school uniforms attributable to moving to a new location). Section 26 of the ALA gives the Land Court jurisdiction to hear and determine all matters relating to compensation under that Act.

In respect of the bill provisions, the explanatory notes advise:

*Clause 20 sets out when the Authority may take land under the Acquisition of Land Act 1967. While most of the Cross River Rail project will be undertaken on State-owned land, there may be a need to acquire property rights for works underground, and to create economic development precincts for the major clusters to be commercially viable. The acquisition power in this clause is limited to land that is required for the Cross River Rail project or an associated prescribed 'transport-related project'. However, if it is intended to use this power for a transport-related project, the regulation must specify this. This ensures that this power is not automatically triggered when a transport-related project is prescribed in the regulation, since it may not be required.*

.....

*This clause makes the Authority a 'constructing authority' for the purposes of the Acquisition of Land Act 1967. This means that the process for acquiring land is under that Act, with the associated powers and obligations.*



*This clause is modelled on sections 25 and 26 of the Transport Planning and Coordination Act 1994 and provides similar powers for acquiring land.*

*Clause 21 recognises that the acquisition of land can sever part of an owner's land from other parts of an owner's land. This may be required on large blocks where transport infrastructure needs to go through the block. This section allows the Authority to take all or part of the remaining land, provided the Authority has the Minister's approval.*

*This clause is modelled on section 25 of the Transport Planning and Coordination Act 1994 and provides for similar abilities to sever part of the land.*

In respect of clause 20, the explanatory notes further advise:

*If the Authority needs to acquire land for prescribed associated 'transport-related projects', then the regulation prescribing the project must also prescribe that land may be taken under this provision (see clause 20(1)(b)). This ensures that the need to acquire land is considered when the project is prescribed and that Parliament considers both the project and any acquisition of land (i.e. in deciding whether to disallow the regulation).*

#### *Potential FLP issues*

Legislation should provide for the compulsory acquisition of property only with fair compensation.<sup>106</sup> The OQPC states, 'A legislatively authorised act of interference with a person's property must be accompanied by a right of compensation, unless there is a good reason'.<sup>107</sup>

#### *Committee comment*

As noted above, the compulsory acquisition powers under the bill are limited to permitting the Authority to only take land that is required for a cross river rail purpose in relation to the cross river rail project or a transport related project prescribed by regulation.

The application of the *Acquisition of Land Act 1967* provisions to the taking of land under this bill provides for compensation for persons whose interest in a property has been adversely affected by its resumption or by the Authority's taking of an easement over the property. If the compensation to be paid is the subject of dispute, the application of section 26 of the ALA gives the Land Court jurisdiction to hear and determine all compensation related matters.

For the above reasons, most particularly the application of the *Acquisition of Land Act 1967* provisions, the committee concludes that the bill will only allow the compulsory acquisition of property where fair compensation is paid to persons whose property interests have been extinguished or adversely affected by an easement.

### **Explanatory notes**

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the bill's aims and origins.

<sup>106</sup> *Legislative Standards Act 1992*, s 4(3)(i).

<sup>107</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 73.

## Appendices

### Appendix A – List of submitters

Sub #	Name
1	Property Council of Australia
2	Brisbane City Council
3	Heart Foundation
4	Queensland Urban Utilities

## **Appendix B – List of witnesses at the public briefing**

### **PUBLIC BRIEFING - 31 OCTOBER 2016**

#### **Department of Infrastructure, Local Government and Planning**

- Mrs Bronwyn Blagoev, Executive Director, Legal, Legislation and Policy Services, Department of Infrastructure, Local Government and Planning
- Mr Greg Chemello, General Manager, Economic Development Queensland, Department of Infrastructure, Local Government and Planning
- Mr Darren Crombie, Deputy Director-General, Infrastructure Policy and Planning, Department of Infrastructure, Local Government and Planning
- Mr Gavin Nicholls, Project Director, Cross River Rail, Department of Infrastructure, Local Government and Planning
- Ms Kate Watkins, Acting Director, Legal, Legislation and Policy Services, Department of Infrastructure, Local Government and Planning

**Appendix C – Department of Infrastructure, Local Government and Planning response to issues raised in submissions**

Infrastructure, Planning and Natural Resources Committee

**CROSS RIVER RAIL DELIVERY AUTHORITY BILL 2016**

**Department of Infrastructure, Local Government and Planning's response to submissions**

This summary is designed to be read in conjunction with the submissions

Submission No	Submitter
1.	Property Council of Australia (PCA)
2.	Brisbane City Council (BCC)
3.	Heart Foundation Queensland (HFQ)
4.	Queensland Urban Utilities (QUU)

**List of acronyms used in submissions:**

**BMSS** means Brisbane Metro Subway System

**CRR** means Cross River Rail

**CRRDA** means Cross River Rail Delivery Authority

**CRR PDA** means Cross River Rail priority development area

**MEDQ** means the corporation sole constituted by the Minister for Economic Development Queensland

Clause	Submitter	Section/Issue	Key points	Departmental response
General	1 (PCA)		The statutory framework proposed for the project's delivery authority in the Cross River Rail Delivery Authority Bill 2016 is supported.	Support noted.
General	2 (BCC)		Council is supportive of the Cross River Rail project.	Support noted.
General	3 (HFQ)		Strongly support the delivery of a Cross River Rail project and doesn't have comment on the model of statutory framework to deliver the project.  Looking forward to receiving updates on the progress of the Cross River Rail project.	Support noted.  The Queensland Government has published a website which is dedicated to the Cross River Rail project. As part of this website, any interested person can sign up to receive regular updates.  See <a href="http://www.crossriversrail.qld.gov.au/">http://www.crossriversrail.qld.gov.au/</a> for more information.
General	4 (QUU)		The Authority be asked to consult appropriately and provide substantive input to the State regarding QUU's involvement in the development of planning and infrastructure assumptions and processes.	QUU's concerns are noted and, once the Authority has been established, these concerns will be communicated to the Authority.  The nature of consultations undertaken by the Authority will be a matter for the Authority. Section 12(3)(d) of the Bill notes that the Authority has responsibility for consulting with relevant entities about delivery of the project.  In addition, the Queensland Government considers the planning and infrastructure needs of other entities when preparing the development scheme for a priority development area. Under the <i>Economic Development Act 2012</i> , a development scheme for a priority development area must

				<p>include a land use plan (which regulates development in the area), a plan for infrastructure in the area and an implementation strategy.</p> <p>As part of the process for preparing a development scheme, the <i>Economic Development Act 2012</i> requires the Minister for Economic Development Queensland ('MEDQ') to consult with the relevant local government and make reasonable endeavours to consult with other affected entities.</p>
General	4 (QUU)		The Authority be responsive to the growing demand for cost effective water and wastewater services in QUU's geographic area.	QUU's concerns are noted and, once the Authority has been established, these concerns will be communicated to the Authority.
General	4 (QUU)		The Authority considers the wider catchment when considering water and wastewater infrastructure delivery.	QUU's concerns are noted and, once the Authority has been established, these concerns will be communicated to the Authority.
General	1 (PCA)	Value sharing	<p>The Property Council remains cautious of the prospect of utilising 'value sharing' or some form of 'value capture' levy to contribute towards financing Cross River Rail. The Property Council has cautioned the Government on the need to ensure any potential funding model does not become simply another tax.</p> <p>Cross River Rail offers potential for the Government to partner with property owners around proposed stations and along the proposed corridor to generate additional urban renewal, uplift and funding opportunities. However, poorly designed 'value capture' levies, based on perceived increases in</p>	<p>The Queensland Government has not yet made any decisions about value sharing mechanisms.</p> <p>One of the functions of the Authority, once it is established, will be to assess the business case and provide advice in relation to value sharing and any other funding options which have been explored.</p>

General	1 (PCA)	Funding	<p>property values, pose a significant economic risk.</p> <p>The Government should seek innovative uses of existing revenue streams prior to developing new bespoke taxing models to finance the Cross River Rail project. The Property Council would strongly encourage the Cross River Rail Delivery Authority to investigate a tax increment financing model which would hypothecate this future tax uplift to the initial cost of project delivery.</p>	One of the functions of the Authority, once it is established, will be to assess the business case and provide advice in relation to value sharing and any other funding options which have been explored.
General	2 (BCC)	Planning framework	<p>Council is seriously concerned about the proposal to expand the authority of the Queensland Government in the city's planning.</p> <p>Council requests the opportunity to provide further feedback to the CRRDA to determine the PDA boundary, development scheme and associated infrastructure planning and an agreed framework to apply to the proposed CRR PDA.</p> <p>The proposed CRRDA and CRR PDA represent an amplification of the current EDQ power in the city.</p> <p>Council requests that this imbalance (in the level of MEDQ delegation) in the management of planning throughout the state be addressed.</p> <p>This Bill, combined with the existing PDAs and proposed PDA at Herston Quarter, constitutes an unjustified exceedance by the Queensland Government into the administration of the city.</p>	<p>The Bill has been drafted to use the existing planning authority of the Queensland Government. The existing mechanisms of the <i>Economic Development Act 2012</i> will be utilised to ensure that the transformational aspects of the project are realised.</p> <p>The existing mechanisms of the <i>Economic Development Act 2012</i> require that MEDQ consults with the relevant local government when preparing a development scheme for a priority development area. Part of the statutory requirements for the development scheme include that it must include a land use plan (which regulates development in the area), a plan for infrastructure in the area and an implementation strategy.</p>
3	2 (BCC)	Purpose	<p>The purpose of the Bill is to allow for the declaration of a significant PDA and PDA associated development areas and the establishment of a commercial entity to</p>	The purpose of the Bill is to establish the Cross River Rail Delivery Authority.



			<p>have broad powers to undertake land use planning, acquire land and self-regulate in order to fund the delivery of an infrastructure project. To remove Council from these functions and give such broad powers to a commercial entity who is not accountable to the community, and apply this framework to such a broad part of the city, represents a level of intervention by the Queensland Government previously unwitnessed in the history of the city. The Bill does not require the commercial entity to consult or include Council in any of its activities. The Bill was prepared with the full exclusion of Council and this approach is reflected throughout the Bill, as the commercial entity is not required to consider or consult with Council in any of its dealings.</p> <p>Council seeks to have the Bill amended to ensure that City Plan's strategic intent is not compromised by the CRR PDA.</p> <p>Council seeks to have the Bill amended to mandate Council input and consultation with the broader community.</p> <p>Council requests the Bill be amended to ensure that it does not compromise the BMSS project and any other Council public transport, road or active transport that may impact either the CRR project or the CRR PDA in terms of physical impact on land or access or may reduce CRR patronage or potentially reduce the value sharing opportunities of development under the CRR PDA.</p>	<p>The Bill does not establish the Authority as a statutory planning entity. Rather, the existing mechanisms of the <i>Economic Development Act 2012</i> will be utilised to ensure that the transformational aspects of the project are realised.</p> <p>Any Cross River Rail priority development area will therefore not be declared under the Bill, but rather under the existing provisions of the <i>Economic Development Act 2012</i>. This includes the existing requirements to consult under that Act. Consequently, the amendments sought by BCC are not supported.</p> <p>It would be expected that the Authority will design and construct assets to the standards of the ultimate asset owner.</p> <p>In addition, the <i>Economic Development Act 2012</i> provides mechanisms for the establishment of standards and the transfer of infrastructure assets. It also requires consultation with the relevant local government as part of the process of preparing a development scheme for a priority development area.</p> <p>Given existing mechanisms and processes in place under the <i>Economic Development Act 2012</i>, the proposed amendments are not supported.</p>
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			The Bill provides for the continuation of the CRRDA until the CRR project and any transport-related projects are completed. Council seeks to have the Bill amended to identify the ultimate asset owner for various infrastructure types. Where Council is identified as the ultimate asset owner, CRRDA should be required to construct those assets in compliance with Council standards.	
3, 6, 14	2 (BCC)	Powers	<p>The broad powers, purpose and elastic scope of the CRRDA are of serious concern. The Bill allows for an unspecified CRR PDA to traverse an extensive corridor and for the CRRDA to indiscriminately acquire land whether that land is required for the CRR facility or not. These powers are too broad and represent a risk to the city's planning and development. A mandate which combines 'facilitation of economic development' in an unrestricted area and for an unrestricted purpose cannot be in the best interests of the city. The community have an expectation that governments of all levels will balance competing interests and resolve in favour of a position which on balance benefits the majority of the community. The CRRDA will make no such considerations, as acting commercially will be a legislative requirement. This approach cannot have blanket application to land use planning and infrastructure planning.</p>	<p>The powers of the Authority are expressed in clause 14 of the Bill. The Authority has the powers of an individual in exercising its functions.</p> <p>The power to acquire land is limited to the Cross River Rail project and any prescribed transport-related projects. The exact land to be acquired and the boundaries of any Cross River Rail priority development area are matters for the Authority and MEDQ to determine in due course.</p> <p>The Bill does not create new land use planning mechanisms for the Authority. Rather, the existing mechanisms of the <i>Economic Development Act 2012</i> will be utilised to ensure that the transformational aspects of the project are realised. These mechanisms may be delegated to the Authority, but the usual checks and balances in the <i>Economic Development Act 2012</i> would apply as the Authority would be acting as MEDQ's delegate.</p>
6	2 (BCC)	Definition of Cross	Council seeks to have the Bill amended to:	The purpose of the Authority is to deliver both

		River Rail project	<ul style="list-style-type: none"> <li>revise the definition of CRR project so that it is limited to the CRR transport facility</li> <li>limit CRRDA to matters associated with a revised definition of CRR project.</li> </ul> <p>Council requests sufficient detail on both the CRR project and the proposed CRR PDA to enable an understanding of the potential impacts.</p> <p>Council request to be consulted in the determination of the extent of the project and the CRR PDA.</p> <p>The ability to exclude development from the definition of the PDA will create uncertainty for landowners in the area.</p>	<p>the rail infrastructure project and the city transformational aspects of the project. Consequently, BCC's proposed amendment is not supported.</p> <p>MEDQ has not yet made a decision about the area of any proposed Cross River Rail priority development area or any development scheme that would apply.</p> <p>Any Cross River Rail priority development area will be declared under the existing provisions of the <i>Economic Development Act 2012</i>. This includes the existing requirements to consult under that Act.</p> <p>The Bill does not enable development to be excluded from the definition of a Cross River Rail priority development area. Rather, it allows for development to be excluded from the definition of the Cross River Rail project (i.e. the development which the Authority will deliver). This enables the Authority to deliver projects but exclude projects which the Authority will not deliver (i.e. where private developers will be operating within the market).</p>
7	2 (BCC)	Definition of transport-related project	<p>Council seeks to have the Bill amended to ensure that the BMSS project is excluded from CRRDA functions and power.</p> <p>Considering the significant uncertainty associated with the extent and nature of the transport-related project,</p>	<p>The Authority's functions includes to facilitate the efficient delivery of the Cross River Rail project and any prescribed 'transport-related projects' (clause 12(1)(b)). Clause 7 of the Bill defines a 'transport related project'. For a project to satisfy that definition and be able to</p>

			<p>it is not possible to understand or comment on the Bill in full. More detail must be provided before the Bill is passed.</p>	<p>be prescribed in a regulation, the responsible Minister must be satisfied that the project 'relates to the operation of rail transport infrastructure provided, or to be provided, as a result of the cross river rail project'.</p> <p>In the absence of a business case for the Brisbane Metro Subway System, it is unclear how the proposed BMSS project will relate to the operation of the rail network, so its relationship to the Cross River Rail project is not yet clear. The Queensland Government and BCC will work to further investigate the interface between the Cross River Rail project and the BMSS project.</p> <p>Part of the Authority's functions, once it is established, will be to recommend to the responsible Minister which projects the Authority believes it is best placed to deliver. Consequently, it is not possible to provide further information in advance of the Authority being established.</p>
8, 12, 13	2 (BCC)	Establishment of the Authority	<p>The Bill contains provision for the establishment of the CRRDA, a commercial entity which will have far reaching and unparalleled power and control to override Council in fulfilling its local government functions, specifically in relation to land use planning and infrastructure planning and delivery.</p>	<p>The Authority is established to facilitate economic development and facilitate efficient delivery of the Cross River Rail project and any prescribed transport-related projects.</p> <p>The core functions of the Authority do not include land use planning and do not remove planning power from BCC.</p>
12	2 (BCC)	Functions	<p>The cumulative declaration of PDAs throughout the city is making it increasingly difficult for Council to</p>	<p>The Authority does not have unlimited boundaries. The Authority is limited to its</p>

			<p>undertake planning and infrastructure planning and delivery. There are currently five PDAs within Brisbane's local government area which cover 834 hectares of city. The proposed CRR PDA will apply over an extensive area and once the PDA is declared it will have an artificial boundary, as the operations of the CRRDA will have no boundaries.</p> <p>The proposed CRR PDA is not contained, is not defined and traverses a substantial geographical part of the city. Therefore the CRR project represents significant opportunity for the current range of interface issues to be amplified, particularly in relation to managing stormwater drainage, transport, open space and community facilities networks.</p> <p>The Bill reflects a failure to understand the interconnectedness of planning and infrastructure in the city. It is not possible to indiscriminately permit significant deviations to land uses without considering the impacts over the remainder of the city. It is not possible to uncouple land use planning and all infrastructure planning and impacts across the city. The Bill enables and encourages a commercial entity to disregard this fundamental principle in the pursuit of commercial returns to fund a singular transport infrastructure project.</p>	<p>functions which are set out in clause 12 of the Bill.</p> <p>MEDQ has not yet made a decision about the area of the proposed Cross River Rail priority development area or any development scheme that would apply.</p> <p>The Authority, once it is established, is expected to provide advice to MEDQ about any proposed Cross River Rail priority development area, but the decision about the declaration of any Cross River Rail priority development area is ultimately one for MEDQ under the <i>Economic Development Act 2012</i> and the processes for making such declaration are not affected by this Bill.</p>
12(4)	2 (BCC)	Functions	<p>The Bill provides that CRRDA must have regard to any planning instrument that applies to the land on which a transport-related project is proposed. For transport-related projects, a commercial entity recognising City Plan is no guarantee that the City Plan's land use, building height and form, yields, community</p>	<p>Prescribing a project as a 'transport-related project' does not remove the requirement for the project to comply with any existing legal requirements.</p>

			engagement and infrastructure standards would be complied with or in accordance with the plan's intent. It is considered a fundamental conflict that CRRDA will be able to acquire land and also assess the impacts associated with the development on the land.	
12, 14	2 (BCC)	Powers and functions	<p>The CRR and BMSS transport projects are both critical to sustain the growth and development of the city. The benefits to the city would be substantial if the CRR and BMSS coexisted and functions as an integrated system. Council requests details of how it is intended to achieve the integration of the projects and for Council to continue to manage the BMSS.</p> <p>Council urgently requests that the CRRDA's powers and functions be amended in the Bill to exclude the BMSS from being declared as a transport-related project under the control of the CRRDA. The Bill should be amended to ensure that it does not compromise the BMSS project and any other Council public transport, road or active transport that may be impacted by either the CRR project or the CRR PDA. This could be in terms of physical impact on land, access or a reduction in CRR patronage or the potential reduction in the value sharing opportunities of development under the CRR PDA.</p>	<p>The Bill does not affect the integration of CRR and BMSS, and exists to support the delivery of CRR to anchor a strong, integrated transport system for Brisbane.</p> <p>The Authority's functions includes to facilitate the efficient delivery of the Cross River Rail project and any prescribed 'transport-related projects' (clause 12(1)(b)). Clause 7 of the Bill defines a 'transport related project'. For a project to satisfy that definition and be able to be prescribed in a regulation, the responsible Minister must be satisfied that the project 'relates to the operation of rail transport infrastructure provided, or to be provided, as a result of the cross river rail project'.</p> <p>In the absence of a business case for the Brisbane Metro Subway System, it is unclear how the proposed BMSS project will relate to the operation of the rail network, so its relationship to the Cross River Rail project is not yet clear. The Queensland Government and BCC will work to further investigate the interface between the Cross River Rail project and the BMSS project.</p>
12	2 (BCC)	Functions	The Bill legislates for Council to be extracted from all aspects of the CRR project including the planning and	The Bill does not remove the ability for MEDQ to delegate MEDQ powers to councils under

			<p>infrastructure jurisdiction of an extensive and undefined part of the city. The CRRDA will have the ability to acquire land, act as a developer, prepare its own planning scheme and make its own planning decisions in respect of its own development projects.</p> <p>The Bill appears to establish a framework which allows the CRRDA to be at risk of a significant conflict of interest, as the CRRDA will act as a delegate of MEDQ in respect of planning matters affecting the broadly defined CRR project. Council strongly objects to the principle of a commercial entity with no accountability to the community having the ability to make decisions on an unspecified corridor, which may or may not be related to the CRR project, at the expense of the remainder of the city.</p>	<p>the existing provisions of the <i>Economic Development Act 2012</i>. Clause 78 of the Bill adds the Authority to the list of entities that MEDQ can delegate its powers to.</p> <p>This does not mean that all of MEDQ's powers must be delegated to the Authority. The intent is that the planning and assessment powers would remain with Economic Development Queensland or another assessment agency and not be delegated to the Authority.</p> <p>In addition, the <i>Economic Development Act 2012</i> requires MEDQ to consult with the relevant local government in preparing a development scheme for a priority development area.</p>
13	2 (BCC)	Functions to be carried out commercially	<p>Council seeks to have the Bill amended to ensure the CRRDA will not have broad powers over an undefined but significant portion of the city. This will ensure that the CRRDA will be subject to the checks and balances the community expect.</p>	<p>The Authority's functions are bounded by a Cross River Rail priority development area and the prescribed 'transport-related projects'.</p> <p>Any Cross River Rail priority development area must be declared by MEDQ under the existing provisions of the <i>Economic Development Act 2012</i>. The intent is that the planning and assessment powers would remain with Economic Development Queensland or another assessment agency and not be delegated to the Authority.</p> <p>The 'transport-related projects' must be prescribed by regulation, which is a function carried out by a government agency and</p>

				subject to Parliamentary disqualification.
20	2 (BCC)	Power to take land	<p>The ability of CRRDA to indiscriminately acquire property to create development precincts is not supported by Council as it does not offer any requirement to align strategically with City Plan. Furthermore, the Bill provides the opportunity for significant conflict of interest to occur through the combination of allowing the CRRDA to (1) act as a delegate of MEDQ, (2) have extensive acquisition powers and (3) act as a commercial development entity. Council does not support this combination of powers and its widespread and undefined application.</p> <p>Council seeks to have the Bill amended to ensure that CRRDA will not have broad powers which have the potential to have far reaching consequences for the city.</p> <p>The amendments to the Bill should ensure compliance with standard resumption procedures contained in the <i>Land Acquisition Act 1967</i> (sic) and the requirement for acquisition to relate only to a redefined CRR project i.e. not extended to sites extraneous to the CRR facility.</p> <p>The Bill allows for land which is owned or leased by the CRRDA to be excluded from rateable land. Council seeks to have the Bill amended to ensure that any land owned by the CRRDA which is not directly related to the CRR facility is to be considered as rateable land.</p> <p>Council seeks to have the Bill amended to ensure that CRRDA does not have the ability to impact adversely</p>	<p>The power to take land is based on existing acquisition powers under the <i>Transport Planning and Coordination Act 1994</i>. These mechanisms require the Authority to comply with the usual processes and compensation provisions of the <i>Acquisition of Land Act 1967</i> so further amendment to the Bill is not required for this purpose.</p> <p>In addition, the Authority may only take land for the Cross River Rail project, or a regulation specifically permits compulsory acquisition for a transport-related project. Consequently, the Authority does not have the ability to indiscriminately acquire property.</p> <p>The Authority's ability to commercially purchase land is limited to its functions under the Bill.</p> <p>Any Cross River Rail priority development area must be declared by MEDQ under the existing provisions of the <i>Economic Development Act 2012</i>. The intent is that the planning and assessment powers would remain with Economic Development Queensland or another assessment agency and not be delegated to the Authority.</p> <p>The Bill does not change which land is rateable under the <i>City of Brisbane Act 2010</i>. Section 95 of the <i>City of Brisbane Act 2010</i> excludes land</p>



			on the delivery of Council services and infrastructure, particularly where it relates to Council owned land or land Council owns in trust.	that is occupied by the State or a government entity from being rateable, but this is not affected by whether or not that land is owned by the Authority.  The proposed amendment is not supported as it may prohibit the efficient delivery of CRR if council owned land or land a council owns in trust is not able to be impacted. Any impacts would need to be managed subject to existing legal requirements.
Part 6	2 (BCC)	Cross River Rail Delivery Fund	<p>The Bill enables CRRDA to retain funds and does not require CRRDA to recognise the reliance and impacts on the infrastructure networks external to the PDA. As CRRDA will operate as a commercial entity, it is highly unlikely to be motivated to redistribute infrastructure charges to Council.</p> <p>Council seeks to have the Bill amended to require that the infrastructure charges collected in the proposed CRR PDA be redistributed to Council (and QUU) to recognise that the infrastructure charges collected for the city are to be expended on priority infrastructure.</p> <p>Council seeks to have the Bill amended to require that the CRRDA compensate Council for any impacts the CRR project may have on Council's assets to ensure that the CRR project does not result in any financial liability to Council.</p>	<p>The Authority is able to retain revenue that it generates. However, the fund is designed to ensure that any amounts that come into the fund are only spent on matters relating to the Cross River Rail project or the other prescribed 'transport-related projects'.</p> <p>The delegation of MEDQ's powers would determine what (if any) funds are retained by the Authority. The Bill does not prevent other delegations by MEDQ to another entity such as BCC.</p> <p>All levels of government stand to benefit economically and financially from CRR. BCC's proposed amendment is not supported</p> <p>As a base case, Economic Development Queensland determines and applies the applicable infrastructure charge for the priority development area. Economic Development Queensland retains these</p>

				<p>charges to finance the delivery of infrastructure in the priority development area.</p> <p>In some PDAs, Economic Development Queensland has agreed to transfer some of the infrastructure charges collected to the council.</p> <p>There remains the opportunity for a decision on the sharing of infrastructure charges between the Queensland Government and BCC within a Cross River Rail priority development area.</p>
69	2 (BCC)	Relationship with <i>Queensland Heritage Act 1992</i>	<p>Council does not support this provision which allows more State and local heritage sites to be potentially compromised or removed.</p> <p>Council seeks to have the Bill amended to remove this provision, as there is insufficient detail relating to the geographic area that these provisions would apply. The provision is too broad.</p>	<p>This clause does not remove the requirement to consider a Queensland heritage place. The Queensland Heritage Council must still be consulted and the Authority must still consider the Council's recommendation. This is the current process that applies to State development. Consequently, BCC's proposed amendment is not supported.</p>
78	2 (BCC)	Delegation of MEDQ powers	<p>These responsibilities (for finding solutions on how to enable the delivery of the CRR project while simultaneously delivering the BMSS) cannot be removed from Council and left to the vagaries of a commercial entity with broad powers, limited accountability and transparency. It is not acceptable for a commercial entity to assume the planning and infrastructure powers of a local government and for there to be no parameters established as to how that commercial entity is to interact with the local government. The commercial entity's decision will</p>	<p>The Bill does not remove the ability for MEDQ to delegate MEDQ powers to a council under the existing provisions of the <i>Economic Development Act 2012</i>. Clause 78 of the Bill adds the Authority to the list of entities that MEDQ can delegate its powers to. This does not mean that all of MEDQ's powers must be delegated to the Authority and does not prevent MEDQ's power being delegated to BCC. The intent is that the planning and assessment powers would remain with</p>

			<p>create a financial liability for Council and ratepayers ultimately and the Bill does not oblige CRRDA to reimburse or compensate Council in any form.</p> <p>Council seeks to have the Bill amended to:</p> <ul style="list-style-type: none"> <li>include the local government as the delegate for all matters relating to land use and infrastructure planning and development assessment</li> <li>include that the local government is to receive all infrastructure charges collected for the local government infrastructure networks to support the delivery of trunk infrastructure within or external to the PDA.</li> </ul>	<p>Economic Development Queensland or another assessment agency and not be delegated to the Authority.</p> <p>Consequently, BCC's proposed amendment is not supported as legislative change is not necessary if the policy decision of government is to delegate these powers to BCC.</p> <p>As a base case, Economic Development Queensland determines and applies the applicable infrastructure charge for the priority development area. Economic Development Queensland retains these charges to finance the delivery of infrastructure in the priority development area.</p> <p>In some priority development areas, Economic Development Queensland has agreed to transfer some of the infrastructure charges collected to the council.</p> <p>There remains the opportunity for a decision on the sharing of infrastructure charges between the Queensland Government and BCC within a Cross River Rail priority development area.</p>
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## Appendix D – Statement of Reservation



**Ann Leahy MP**  
**Member for Warrego**

Mary Westcott  
Acting Research Director  
Infrastructure, Planning and Natural Resources Committee  
Parliament House  
Cnr George and Alice Streets Brisbane Qld 4000  
By email only to [mary.westcott@parliament.qld.gov.au](mailto:mary.westcott@parliament.qld.gov.au), [ipnrc@parliament.qld.gov.au](mailto:ipnrc@parliament.qld.gov.au)

22<sup>nd</sup> November 2016

Dear Ms Westcott

RE - Non-Government Members' Statement of Reservation regarding the Cross River Rail Delivery Authority Bill 2016.

The LNP members of the Infrastructure, Planning and Natural Resources Committee (the Committee) have serious concerns about the Cross River Rail Delivery Authority Bill 2016 (the Bill). The LNP members are concerned about the:

- *lack of transparency regarding the business case for Cross River Rail project which is stifling public debate about the up to \$15 billion project;*
- *interventionist approach to planning which is causing uncertainty and inconsistency;*
- *secrecy about how it will fund the Cross River Rail project, including the use of value capture mechanisms under delegated powers from the Minister for Economic Development Queensland;*
- *rushed approach to pushing this Bill through the Committee process given the substantial delay in establishing the proposed Delivery Authority.*

### LACK OF TRANSPARENCY

Labor's election policy for Building Queensland stated (emphasis added):

*"The policy guidelines for Building Queensland will require that a cost-benefit analysis and assessment of value for money take place prior to any project approval and that this assessment be released for public consultation."*

It is disappointing that Labor has broken this election promise and has ignored repeated calls to release the business case and cost-benefit analysis for the Cross River Rail project.

Queenslanders have been kept in the dark about the true cost of the Cross River Rail project, and who will pay for it. It is especially concerning given the 1.21 cost-benefit ratio stated by the Deputy Premier failed to take into account the European Train Control System (ETCS) even though the ETCS was funded in the 2016/17 State Budget.

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After media questioning Building Queensland had to re-model the cost-benefit analysis for Cross River Rail and the benefit cost ratio reduced significantly to 1.06. This is an embarrassing mistake and undermines public confidence in Labor's secret cost-benefit analysis.

The LNP members of the Committee consider it is inappropriate for a further \$50 million to be spent to establish the proposed Delivery Authority until the public has had the opportunity to scrutinise the cost-benefit analysis consistent with Labor's election promise.

#### INTERVENTIONIST APPROACH TO PLANNING

The LNP members of the Committee cannot recall a government in living memory that has run roughshod over local government planning responsibilities.

Brisbane City Council's Chief Executive Officer, Mr Colin Jensen, expressed similar concerns in a submission to the Committee and the impact that the Palaszczuk Government's approach was having on planning outcomes.

The Brisbane City Council submission stated (emphasis added):

*"Council is seriously concerned about the proposal to expand the authority of the Queensland Government in the city's planning. The city is currently experiencing an unprecedented level of Queensland Government planning intervention via the combination of mechanisms including Priority Development Areas (PDAs), State planning regulatory provisions, ministerial call-ins and ministerial directions. The city is at risk of becoming a two speed development environment. This approach is not sustainable."*

The LNP Committee members urge the Palaszczuk Government to curb its interventionist approach to Australia's largest local government. It is critical that the Palaszczuk Government work with key local councils like Brisbane City Council for the benefit of all Queenslanders, not the Palaszczuk Government's own political interests.

#### SECRET TAXES

The Explanatory Notes state a statutory body, established under special purpose legislation, was determined to be the preferred model for the Cross River Rail Delivery Authority because, inter alia, it has the ability to specify land acquisition powers and any value sharing mechanisms. Value sharing is described in the Explanatory Notes as "a form of funding that recovers some or all of the private sector value created by public investment in infrastructure."

No detail has been provided through the Committee process about:

- the quantum of secret taxes that will be imposed under 'value sharing mechanisms';
- which Queenslanders will pay more through these secret taxes;

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- what safeguards or opportunities for public consultation will be available regarding the imposition of these secret taxes under 'value sharing mechanisms'.

Key stakeholders share the LNP Committee members' concerns.

The Property Council of Australia in its submission to the Committee stated:  
*"the Property Council remains cautious of the prospect of utilising 'value sharing' or some form of 'value capture' levy to contribute towards financing Cross River Rail. The Property Council has cautioned the Government on the need to ensure any potential funding model does not become simply another tax."*  
*"poorly designed 'value capture' levies, based on perceived increases in property values, pose a significant economic risk."*  
*"The Government should seek innovative uses of existing revenue streams prior to developing new bespoke taxing models to finance the Cross River Rail project."*

The LNP Committee members, and Brisbane City Council have substantial concerns about the lack of consultation and impact of the Palaszczuk Government's proposed plan for secret taxes to fund the Cross River Rail project.

#### RUSHED COMMITTEE PROCESS

The Palaszczuk Government has been talking about establishing a Delivery Authority for Cross River Rail since April 2016 however, it took the government over six months to prepare the enabling legislation and introduce it to the Parliament.

The LNP Committee members note the enabling legislation was only introduced after media scrutiny about the Palaszczuk Government meeting the project schedule outlined in the Cross River Rail business case. This schedule required the Cross River Rail Delivery Authority to be in place by October 2016. It has become a systematic failure of the Palaszczuk Government to miss self-imposed delivery dates.

After the Palaszczuk Government missed its own deadline the Parliamentary Committee was forced to fast track consultation on the Bill, providing only eight business days for stakeholders and interested parties to review the Bill and provide feedback. Brisbane City Council noted this rushed consultation in its submission, which states:

*"It is important to note, that this is Council's initial response to the Bill. Given submitters were allowed only eight business days to review, consider and respond to the Bill, Council response may include further detailed information."*

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The LNP Committee members are disappointed that the Palaszczuk Government has failed to properly consult on the proposed Delivery Authority to deliver Labor's number one priority infrastructure project.

#### SUMMARY

The LNP Committee members have serious concerns about the Bill and the Palaszczuk Government's:

- lack of transparency about the business case for Cross River Rail project which is stifling public debate about the up to \$15 billion project;
- interventionist approach to planning which is causing uncertainty and inconsistency;
- secrecy about how it will fund the Cross River Rail project, including the use of value capture mechanisms under delegated powers from the Minister for Economic Development Queensland;
- rushed approach to pushing this Bill through the Committee process given the substantial delay in establishing the proposed Delivery Authority.

Some stakeholders, including the Brisbane City Council share the LNP's concerns and the LNP urges the Palaszczuk Government to address these concerns.

Yours faithfully

A handwritten signature in black ink that reads "Mark Robinson".

**Mark Robinson MP**  
**Member for Cleveland**

A handwritten signature in black ink that reads "Ann Leahy".

**Ann Leahy MP**  
**Member for Warrego**

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