Housing Availability and Affordability (Planning and Other Legislation) Amendment Bill 2023

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Planning Institute Australia

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Committee Secretary
State Development and Regional Industries Committee
Parliament House, George Street
Brisbane Qld 4000

By email: sdric@parliament.qld.gov.au

Dear Committee Secretary

Re: Submission on Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023

The Planning Institute of Australia (PIA) is the national body representing the planning profession, and planning more broadly, championing the role planning in shaping Australia's future. PIA facilitates this through strong leadership, advocacy and contemporary planning education.

PIA appreciates the opportunity recently to appear before the State Development and Regional Industries Committee (SDRIC) on the *Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023* (Bill) to provide our preliminary views, and is pleased to provide the following comprehensive submission for consideration.

Summary Statement

- PIA supports the Bill with its objective to optimise the State's planning framework to provide new tools and improve the operation of the Planning Act 2016 (PA) and related legislation to respond to the current housing challenge.
- PIA is supportive of the operational amendments in the Bill which will improve the operation and process aspects of the PA and related legislation.
- PIA is supportive of the proposed growth area tools, but makes recommendations for greater clarity and fine-tuning to ensure they are fit-for-purpose, with additional recommendations proposed to be progressed separately.
- PIA acknowledges that the Queensland Government, in partnership with stakeholders, continues to progress initiatives to streamline the state's planning and development processes with the aim of delivering faster and better outcomes consistent with community needs and expectations.
- PIA notes that the effective implementation of the proposed reforms will be dependent upon the willingness to exercise the new powers where appropriate and that sufficient funding and resourcing is provided to support implementation.

Preamble

PIA acknowledges the current housing crisis and supports action to help address these systemic challenges. We note this housing crisis is not unique to Queensland or even Australia, but is a global phenomenon. The data is consistently telling us that the single biggest issue affecting the timely delivery of housing on the ground is construction challenges, and that planning changes alone cannot solve this crisis.

Whilst not a crisis response, planning does play an important role in ensuring the next wave of housing commences down the supply pipeline in the medium term. Good planning assists in addressing current and future housing needs and ensuring that communities are provided with accessible and secure housing and other essential facilities, services and infrastructure.

PIA acknowledges the Deputy Premier, Minister for State Development Local Government and Planning (Minister) and the Department of State Development Infrastructure Local Government and Planning (Department) for the continued efforts to improve our planning system including enhancing the suite of growth area tools and improving the operational performance of the State's planning system.

The following submission is based on consultation with PIA's diverse membership and the critical role that PIA's members play in land use planning and development assessment across the public and private sectors. In PIA's opinion, the most significant changes proposed by the Bill relate to the growth area tools being the:

1. Take land or create easements for development infrastructure;
2. State facilitated application pathway; and
3. Urban Investigation Zone.

PIA's submission is focused on these significant elements and touches lightly on the operational matters of most relevance.

Take or purchase land or create easement for development infrastructure

PIA supports this initiative to enhance the range of tools available to facilitate the provision of infrastructure to support development in a timely and efficient manner. The ability of the State to compulsorily acquire land to facilitate the provision of development infrastructure, including the power to resume easements for development infrastructure, is a useful and necessary addition to the suite of tools available to coordinate infrastructure planning and delivery.

PIA acknowledges that the use of this power will affect private property rights but notes that affected owners and interest holders will be compensated and the ability to compulsorily acquire land (and assessment of compensation) is a long-standing and well understood process in Queensland.

The Explanatory Notes to the Bill explain that this is a reserve power, and it is noted that to exercise this power is subject to a number of pre-conditions, including the Minister being satisfied that reasonable steps have been taken to obtain the agreement of the owner. Under the *Planning Act 2016* (PA), local governments have the long-standing ability to take land for planning purposes but this power has rarely been used. Similarly, many public authorities have existing powers under the *Acquisition of Land 1967* to compulsorily take land or easements for infrastructure.

While PIA acknowledges the importance of seeking to obtain the agreement of the relevant parties to the provision of the infrastructure in the first instance, for this reform to deliver tangible benefits, it will be necessary to ensure the power is exercised in appropriate circumstances and the Department is resourced to support the Minister to perform this function.

PIA also wishes to highlight the critical need to ensure that the funding of infrastructure is addressed as part of the planning process as the availability of funding for trunk infrastructure is one of the main determinants of development timing.

Finally, at the SDRIC briefing on 23 October 2023, reference was made to approaches used in other jurisdictions and the Committee invited further information to be provided on this topic. PIA recommends the New South Wales approach be investigated for consideration. In NSW there is an ability for a landowner to seek an easement over adjoining land under s 88K of the *Conveyancing Act 1919* (NSW). This is subject to a number of requirements, including approval of the NSW Supreme Court and that the proposed easement is reasonably necessary for the effect use or development of the applicant's land and the applicant's use of their land not be inconsistent with the public interest, but represents a process which can be initiated by a landowner.

State Facilitated Application Process

PIA supports, in principle, the State facilitated application process and acknowledges there is a legitimate role for State-reserve powers to intervene in the public interest in appropriate circumstances. With respect to the current housing challenge, there is an imperative to enhance the delivery of housing that is affordable and well-located, and it is acknowledged that the State facilitated application provisions are proposed as a new growth area tool to help facilitate urban development that is an identified State-priority and for urban purposes.

Based on the information currently available, PIA is seeking greater clarity about the use and operation of the proposed State facilitated application process and in ensuring it is 'fit for purpose' for its intended role. PIA takes this opportunity to identify potential issues for consideration of the SDRIC and the Department in considering this Bill and in developing the subordinate legislation and corresponding policy, should this Bill pass.

While not identical, the State facilitated application process has many similarities with the Ministerial call in power and (if the Bill is enacted) would form part of the suite of tools able to be used by the Minister, including Ministerial Infrastructure Designations.

According to supporting material provided by the Department, the intended focus of the State facilitated application process is on affordable housing and large residential development with complex state interests or outdated policy settings. Potential scenarios referred to by the Department include market residential developments with affordable housing components.

From a high-level perspective, PIA notes that Ministerial reserve powers fundamentally involve one (or both) of two types of intervention being: process intervention; and/or policy intervention.

- A process intervention refers to powers which enable the State through the Minister to deal with development in a different process to what would ordinarily apply.

- A policy intervention refers to powers which change how the State through the Minister or Chief Executive is required to assess the merits of a development application and what rules or criteria are applied to assessment and decision making.

In respect of the proposed State facilitated application, this involves both process and policy interventions. The State facilitated application process will change the way in which a development application is assessed by removing any referral and public notification requirements that would otherwise have applied. The State facilitated application process will also change how a development application is assessed by excluding code or impact assessment and decision-making rules and substituting new rules focused on a 'first principles' approach based on State interests.

With the understanding that the State facilitated application pathway is (at least initially) intended to primarily facilitate the delivery of social and affordable housing, PIA makes the following observations:

Process changes

- Process reforms to fast track the development assessment process (particularly with regard to the removal of third party appeal rights) are considered to be reasonable and proportionate in the circumstances.

- Although this will in some cases remove public rights and be contrary to community expectations, this is balanced against the public interest in providing development that is deemed by the Minister to be a State priority.

- Other than removing third party appeal rights it does not appear that the State facilitated application process will provide for significant fast-tracking of development approvals, as it appears that a State facilitated application will still generally be assessed through the standard development assessment process contained in the PA.

- While some steps, such as referral will not formally apply, it is assumed that a State facilitated application will still need to be considered by relevant referral agencies and the Chief Executive will need to liaise with relevant agencies (as well as the relevant local government). Therefore, while statutory referral processes will not apply, it is assumed that administratively relevant engagement and internal approvals will need to be undertaken to inform decision making.

- The Bill requires a relatively comprehensive process to be followed before the Minister can declare that a proposed development is a State facilitated application. This process may involve a substantial assessment by the Minister as to whether the proposed development meets the criteria to be declared a State facilitated development and, if so, give notice of the declaration.

- Having regard to the above points, it appears to PIA that the primary process benefit of the State facilitated application process is to remove third party appeal rights and the risk that development may be delayed through submitter appeals.

Policy changes

- The State facilitated application process fundamentally changes how a development application is assessed. Rather than being subject to code or impact assessment (and the associated decision-making rules), an application will be subject to a broad assessment against 'any State interests relating to the development'. While the Chief Executive may also consider any planning instruments applying to the premises as well as any information or advice given to the chief executive, it appears that the primary focus will be on State interests which is consistent with the supporting information published by the Department.

- While this is similar to the situation that applies to a Ministerial call in, PIA has concerns that this approach, which changes the 'rule book' that applies to a development application has the potential in certain circumstances to impact community confidence in the planning system by diminishing the relevance and importance placed on local planning instruments. PIA has raised concerns with eroding the already fragile relationship with the community in previous submissions.

- In simple terms, if the State is able to disregard local planning instruments, the community may question why resources are put into making local planning instruments, including community engagement, when the State can declare that particular applications are not bound by this process.

- PIA understands this change is intended to ensure that the State has sufficient discretion to approve priority development notwithstanding potential conflict with a local planning instrument (particularly where a local planning instrument is out-of-date or not consistent with current State priorities).

- Although not necessarily well understood by the community, PIA notes that a wide discretion is generally provided under the standard decision making rules (particularly in relation to impact assessment) and strict compliance with development standards in local planning instruments is not necessarily mandatory, so the State as assessment manager, especially without third party appeal rights, would have a discretion without the need to completely set aside a local planning instrument.

- PIA recognises that this is a policy issue for the State as to the degree of flexibility that is provided to the Chief Executive but recommends that the decision-making rules for State facilitated applications be further considered and explained to ensure that appropriate weight is given to local planning instruments to maintain transparency and accountability in decision making and public confidence in the planning system.

A final point is its useability. The State facilitated application process is described as a reserve power, but it is unclear how frequently it is intended that the process is used and what scale of development is intended to be subject to this process.

PIA notes that the Ministerial call-in power has rarely been used and on average over the last decade, less than one application a year has been called in. Given the existing housing crisis and housing need, it is considered that if the State facilitated application process is to deliver measurable improvements in housing supply, a number of applications and/or large-scale applications will need to be declared State facilitated applications. Where this is the case and, if these may be smaller scale affordable housing or infill projects, there is a risk that the State

facilitated application process may be too onerous and its complexity may be a disincentive for use.

To assist in implementation, PIA recommends Development Assessment timeframes be tracked and publicly released quarterly via an online dashboard, including local government assessment timeframes, the Ministerial Infrastructure Designation process and this new State facilitated assessment process, if enacted. This would create greater transparency around efficient and effective assessment pathways for applicants and would be used to inform future policy and legislative decisions, such as this. Improved data can help us make more informed decisions about resourcing and future policy interventions.

A further implementation difficulty may be coordination with infrastructure providers. More often than not, local government or their affiliated entities are responsible for the provision of key urban infrastructure such as roads, water and sewer. The State facilitated application processes could potentially create more issues where approvals are being granted such as:

- Infrastructure delivery or funding not being properly considered because the State is not the entity responsible.
- Inability to access historical records, permits over the land or planning related information, such as local standards and conditions for construction;
- Levying of infrastructure charges, offsets and agreements; and
- Transfer of all records to the local government to enable on going assessment for future applications and development permit management notwithstanding the local government has not collected any fees and charges (as it is entitled to) for this process.

PIA recommends that a balanced approach is taken and clear criteria outlined about when State facilitated application processes are to be used. PIA would be concerned if the intent is for State facilitated application processes to be used to undermine strategic planning or simply because an Applicant is aggrieved with their dealings with local government.

PIA recommends further opportunity to engage with the Department about this process and its intended use to ensure that the final form of the tool is of maximum benefit and achieves an appropriate balance around efficiency and accountability.

Urban Investigation Zone

PIA supports the introduction of the proposed Urban Investigation Zone to assist local governments to better sequence development and focus resources to maximise the efficiency of land release. PIA also supports the protection of future growth areas from inappropriate development, including preventing the fragmentation of land or development that may prejudice long-term urban development outcomes.

PIA acknowledges the importance of ensuring that growth areas are subject to appropriate levels of land use and infrastructure planning to ensure that urban growth is efficiently and effectively managed, especially in relation to the coordination of development and infrastructure provision.

PIA also acknowledges that for the development of major growth areas and master planned communities in Queensland, the private sector plays a vital role in the creation of these new

communities. Previous attempts of regulating master planning and structure planning under former legislation have generally been unsuccessful and the PA expressly removed processes that applied under the former *Sustainable Planning Act 2009*.

PIA believes that the community is best served when the public and private sectors work together in collaboration and use their respective expertise and resources for common purpose.

PIA recommends that there are appropriate 'checks and balances' to ensure the Urban Investigation Zone is only used in appropriate circumstances and that necessary land use and infrastructure planning is progressed in a reasonable and appropriate timeframe. PIA recommends a 2 yearly review is undertaken, with the option for local governments to extend this period based on evidence structure planning is progressing or that the land is not needed to meet the medium to longer term housing targets.

The introduction of this zone should be accompanied by an obligation to progress land use planning and infrastructure delivery in a timely manner, with adequate support provided for local governments. This is particularly important given the Bill removes the potential for compensation when land is included in this zone.

One of the key issues that has emerged through the current housing crisis is the need to ensure that the regulatory land use planning system can keep pace with the speed of housing delivery needed to meet the needs of our growing population. PIA acknowledges the strategic planning process can be too slow at responding to the needs of our growing communities. The risk with this new zone is that it exacerbates this issue, by further preventing the delivery of housing on the ground due to the lag time associated with progressing strategic planning through the legislative framework.

In response, PIA recommends Queensland's planning scheme amendment processes is reviewed to provide opportunities for local governments to expeditiously amend their planning schemes to respond to the emerging needs of local communities.

PIA is of the view that:

- The ability to rezone land to the Urban Investigation Zone without triggering a right to compensation is a reasonable and proportionate response in the circumstances and will encourage local governments to protect future growth areas without fear of being liable for compensation for adverse changes.

- The prohibition on development in the Urban Investigation zone does restrict flexibility and discretion to use land in the Urban Investigation Zone. However, it is noted that development may still occur in the Urban Investigation Zone through the State facilitated application pathway, so it is not an absolute prohibition. However, while this does provide a level of discretion and flexibility for managing development in the Urban Investigation Zone, without greater clarity about this new assessment pathway, there are concerns about the use of the State facilitated application pathway in this context.

PIA cautions that this new zone would best be implemented alongside other reforms to ensure our planning system is more efficient. In addition to our recommendation for a more efficient planning scheme amendment process, there should be further consideration of value uplift and capture associated with planning for the Urban Investigation Zone to help offset the significant

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financial contribution required by State and Local Governments in delivering the necessary infrastructure within new growth areas. We know this is one of the main barriers to the timely delivery of housing in these new growth areas, with new funding mechanisms for the provision of timely essential infrastructure required to unlock these areas in a more timely manner.

PIA encourages the Department to engage further with stakeholders about the intent of the Urban Investigation Zone and the preferred pathways for transitioning land from the Urban Investigation Zone to a development zone with co-ordinated infrastructure and to the completion of the planning process.

Operational Changes

In addition to the above proposed new growth area tools, the Bill proposes a range of other operational amendments.

These are supported in principle by PIA and, in the time available to review the Bill, no major issues have been raised by our membership in relation to these proposed changes.

Two of these matters are submitted in below.

<u>Ministerial Powers to direct urgent action by local government to amend planning scheme</u>

PIA supports the Planning Minister having reserve powers to direct local governments to amend their planning schemes. PIA believes these powers should be used infrequently.

Related to this, PIA recommends consideration should be given to the provision of funding to support the delivery of contemporary housing studies for local governments.

Whilst Ministerial Powers are important, there are other tools that the Queensland Government is recommended to review such as planning scheme amendment process, to continue to support a nimble and responsive land use planning system in Queensland.

<u>Public notification changes</u>

PIA supports the changes outlined in the Bill which remove the requirement for public notices to be published in local newspapers. PIA consider this change reflects the shifts towards more digital technology platforms which can provide the community with access to a range of planning information.

Whilst PIA notes that many local governments in SEQ have recently implemented new technology solutions to support better access to planning information for the community, regional local governments simply do not have the resources to implement these changes.

Given the Bill will change public notification provisions statewide, PIA recommends that the Queensland Government may need to look at ways in which regional local governments can be supported to transition and implement new technology solutions to support ease of access to planning information.

Summary of Recommendations

To summarise, the following recommendation are made by PIA though this submission.

1. In relation to the taking land or creating easements for development infrastructure:

    a. PIA recommends the New South Wales approach be investigated and considered for applying in a Queensland context, where there is an ability for a landowner to seek an easement over adjoining land under s 88K of the *Conveyancing Act 1919* (NSW).

2. In relation to State facilitated application process:
    a. PIA recommends that the decision-making rules for State facilitated applications be further considered and explained to ensure that appropriate weight is given to local planning instruments to maintain transparency and accountability in decision making and public confidence in the planning system. PIA recommends that a balanced approach is taken and clear criteria outlined about when State facilitated application processes are to be used.
    b. PIA recommends further opportunity to engage with the Department about this process and its intended use to ensure that the final form of the tool is of maximum benefit and achieves an appropriate balance around efficiency and accountability.
    c. PIA recommends Development Assessment timeframes be tracked and publicly released quarterly via an online dashboard, including local government assessment timeframes, the Ministerial Infrastructure Designation process and this new State facilitated assessment process, if successfully enacted. This would create transparency around efficient and effective assessment pathways for applicants and to inform future policy and legislative decisions, such as this. Data could help us better understand what impact a process such as this could actually have.
3. In relation to the Urban Investigation Zone:

    a. PIA recommends that that there are appropriate 'checks and balances' to ensure the Urban Investigation Zone is only used in appropriate circumstances and that necessary land use and infrastructure planning is progressed in a reasonable and appropriate timeframe. PIA recommends a 2 yearly review is undertaken, with the option for local governments to extend this period based on evidence structure planning is progressing or that the land is not needed to meet the medium to longer term housing targets.

    b. PIA recommends the review of Queensland's planning scheme amendment processes to allow local governments to expeditiously amend their planning schemes so they can respond more effectively to the needs of local communities.
4. In relation to the Ministers powers to direct a Local government to amend a planning scheme:

    a. PIA recommends consideration should be given to the provision of funding to support the delivery of contemporary housing studies for local government.

5. In relation to the public notification changes:

a. PIA recommends that the Queensland Government may need to look at ways in which regional local governments can be supported to transition and implement new technology solutions to support ease of access to planning information.

Conclusion

PIA appreciates the opportunity to address the SDRIC with our preliminary views on 23 October and to provide this follow-up comprehensive submission for consideration.

As stated in the introduction, PIA supports the Bill and considers that the proposed changes will improve the operation of the PA. The new growth area tools for responding to the current housing challenge are also supported with recommendations contained herein for additional clarity and details to ensure there are no adverse or contradictory outcomes.

The Bill is considered to be an important step forward, however PIA reiterates previous advocacy for dedicated resources to long term planning, connection between regional and local planning and infrastructure funding and planning, along with a collaborative approach between all stakeholders remain the essence of good planning, and legislative responses cannot compensate for these essentials.

PIA looks forward to continuing to work with the Queensland government and other stakeholders to innovate and improve the State's planning system and support action to increase housing supply and ensure the provision of affordable and well-located housing for Queenslanders.

Should you wish to discuss the above, contact Nicole Bennetts, Queensland State Manager on [redacted].

Yours sincerely,

Sean Cullen RPIA
Vice President, Queensland
Planning Institute of Australia