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

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31 October 2023

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

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

To the Committee,

This submission is made by officers of Redland City Council (Council).

Council received an email on 17 October 2023 inviting submissions on the *Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023*. The email indicated a due date for submissions of midday, 31 October 2023. This provided Council officers with approximately 10 business days to review and interpret a significant Bill and associated explanatory notes. It is considered that this timeframe is insufficient and does not provide local governments with an appropriate amount of time to interpret and understand the full implications of the proposed changes.

In the short timeframe provided, Council officers have reviewed the Bill and provide the following submission:

State Facilitated Application Process	The intent of this new process is similar to the process for a Ministerial Designation of premises for development of infrastructure under s35 of the *Planning Act 2016* (noting that Schedule 5 of the *Planning Regulation 2017* includes 'social or affordable housing that is provided by a registered provider within the meaning of the *Housing Act 2003*' as infrastructure prescribed for section 35(1) of the Act). However, under this new process, other parts of a development will be included and assessed. The example used by the State in its fact sheet is: • A mixed-use, multiple dwelling is proposed on the riverside forefront delivering community facilities and affordable housing. The development is proposed to include 200 dwellings and 40 affordable housing units.

	Concerns with this process include: • The intent of the change it to deliver development that is a priority to the State (for example, affordable housing). However, there appears to be very broad, discretionary criteria for what is able to be lodged as a State facilitated application (for example, a mixed-use development where only a small amount of affordable housing is provided). Given third party appeal rights do not apply to approvals given under the State facilitated application process, it is likely that some applications will be made that include only a small number of affordable housing units, to bypass the standard development assessment process and appeal rights. • If applications including affordable housing are approved through this process, what will bind these developments to continue to use the development as affordable housing in the future, and for how long? • It is unclear what assessment benchmarks will apply for these applications. • It is unclear how local governments will be called upon to provide comment on a State facilitated application and how long they will be given to assess and provide comment. • Will the State have sufficient expertise to undertake such assessments? Local governments have in-house engineering, environmental, landscaping, health professionals and the like who have knowledge of the local area and have existing procedures and systems in place to manage the development assessment process. Even within this system, it can be difficult to assess and fully resolve all issues for a development application within the current timeframes. How will the State manage this in a fast-tracked system, whilst still maintaining quality development outcomes? • It is understood that Council will be responsible for any subsequent applications. It is likely that the fast-tracking of these State facilitated applications may result in insufficiently resolved issues (for example, engineering issues) that then become an issue during the assessment of subsequent applications, resulting in delays and potentially, require changes to the approval issued by the State. If a full and thorough assessment is done from the outset, it is likely that there will be less delays later in the subsequent approvals and construction stages. • There is concern that the State facilitated application process could be used to revisit applications that are subject to a current appeal or have gone through an appeal process. This could include submitter appeals and is a concerning dilution of public engagement in the planning process.
Urban Investigation Zone	It is considered that the new urban investigation zone is very unlikely to achieve its purpose. To include an area within this zone, a major amendment to the planning scheme will be needed. This amendment will highlight to landholders within an area that their potential development plans will be put on hold (prohibited from being lodged). This will likely bring forward development applications in areas that are not sufficiently planned for. It is also noted that in addition to the standard major amendment process, an additional process under the Minister's Guidelines and Rules (MGR) will need to be undertaken to ensure the introduction of this zone is not an adverse planning change.

	By the time the amendment and additional process under the MGR is undertaken, and a major amendment adopted, it is likely that several years will have passed (based on Redland City Council's experience of the timeframes currently taken for processing major amendments). In the meantime, applications are likely to have been lodged within the area to avoid the upcoming prohibition. If by the time the amendment process is complete there is still grounds to adopt the new zone, the actual planning for the area will commence, which will trigger another major amendment process. This may or may not occur within the 5 year timeframe for review of the zone. Overall, adopting this zone will significantly increase the time taken to finalise planning for an area, and is likely to encourage rather than prevent applications being made in areas where planning for development has not been finalised. It is also noted that the prohibitions for development in an urban investigation zone have no effect for State facilitated applications. Therefore, even if the zone is in place, the intent of the zone to prohibit development until detailed land use and infrastructure planning is undertaken, can be undermined. The concept has merit (prohibiting development in an area until sufficient planning has been undertaken), however, it is considered that the process is too time consuming. A TLPI like process would be better suited, or alternatively, changes to the *Planning Regulation 2017* to prohibit certain types of development within the existing emerging community zone.
Temporary Accepted Development	These changes allow development to be declared temporary accepted development for a stated period. The changes have been proposed to help State and local governments to quickly respond to an urgent or emerging issue (such as temporary housing). Concerns are raised in relation to when these temporary uses conclude, and the use rights revert back to what was in place prior to the declaration. What happens to the residents who have been occupying these premises temporarily? Making a temporary residential use unlawful after a certain period of time will create a compliance burden for Council and may lead to further housing issues for residents whose temporary home is no longer lawful.
Minister's Direction Powers	The changes allow the Planning Minister to direct a local government to amend its planning scheme without first giving notice. This removes the ability for a local government to make a submission to the Minister and work with the State Government to determine a suitable outcome to resolve the matter.
Suspension of Appeal Period for Infrastructure Charges Notices (ICNs)	Proposed change to Section 125(2), omit 'the representations' and insert 'any representations made by the recipient' conflicts with Section 229 (Appeals to tribunal or P&E Court) that states in sub-section (6) that a petition cannot be about the adopted charge itself. Other proposed changes to introduce a mechanism to withdraw representations in Section 125 are generally supported in principle. However, the retrospective suspension of the appeal period for withdrawn representations could have the unintended consequence of recipients of charging notices submitting frivolous grounds simply to have the option of extending the 20 day appeal period.

Advice from State Government officers is that consultation on the associated *Planning Regulation 2017* changes will take place in late January 2024. The local government election caretaker's period will be commencing at this time and will impact on Council's ability to comment on these changes. Consideration should be given to the appropriate timing of future consultation periods.

Please contact Council's Principal Strategic Planner, [redacted] on [redacted] or [redacted] for further information relating to this submission.

Your sincerely,

[redacted]

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Redland City Council