

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

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Every Queensland
community deserves
to be a liveable one

31 October 2023

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

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

Dear Committee Secretary

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

The Local Government Association of Queensland (LGAQ) welcomes the opportunity to provide feedback to the State Development and Regional Industries Committee on the *Housing Availability and Affordability (Planning and Other Legislation) Amendment Bill 2023* (the Bill).

The chronic housing crisis gripping many parts of Australia is inflicting worsening human and economic tolls. Urgent action is needed, and local governments are not standing still on this issue.

Despite being the most financially constrained level of government, Queensland councils have, and continue to invest considerable time and resourcing in facilitating development outcomes, supporting local communities and developing innovative partnerships to respond to the housing crisis.

The LGAQ and Queensland councils remain committed to continue working in partnership with other levels of governments, industry and the community, to effectively address the challenges of housing affordability and supply.

However, in considering the Bill, the LGAQ and local governments throughout Queensland hold serious concerns about the content and potential implications of the proposed changes. Principally, the Bill compromises the ability of local governments to work alongside stakeholders to ensure every Queensland community is a liveable one.

As currently drafted, the LGAQ concerned the Bill will:

- Create timely and costly barriers to development and impose considerable regulatory burden on local governments;
- Undermine local decision-making powers in land use planning and development assessment;
- Erode community trust in the planning system;
- Disregard community values and local interest in planning;
- Result in the loss of local heritage values; and
- Create loopholes for unintended adverse development to occur.

In addition, the LGAQ is also extremely disappointed in the short timeframes for consultation on the Bill. The consultation period does not have regard to the time local government officers require to review the Bill, draft a submission, brief Councillors, and obtain the necessary approvals to provide a submission. The limited timeframe is also not in line with expectations that are set under the Partners-in-Government Agreement with the State.

A 10-business day consultation period is not sufficient to consult across 77 councils on significant matters that affect most LGAs. As such, while all local governments will be impacted by the Bill, most



will not be able to make a submission within the timeframes provided, and therefore, consultation outcomes cannot be considered truly representative or genuine.

In 2023, the LGAQ published a 39-point Local Government Housing Strategy 'Conquering the housing crisis' (enclosed) – detailing numerous actions, identified by Queensland councils, which the State could take to address the housing crisis. The strategy is a constructive document, supported and co-drafted with local governments at a grass-roots level, with a series of short, medium and long-term actions.

While some traction has been made against some of these actions, thus far, many actions remain unanswered and should be considered by the Committee in its review of the Bill. The LGAQ would welcome the opportunity to discuss these practical and constructive solutions further, recognising the housing challenges across Queensland are complex, multi-faceted and driven by a diverse range of factors.

The attached submission references the 2023 Local Government Housing Strategy and provides comments and recommendations relating to the 'key changes' proposed by the Bill, outlining alignment with the LGAQ Policy Statement and resolutions passed by Queensland councils at recent LGAQ Annual Conferences.

Queensland councils and the LGAQ remain committed to working with the State government along with all stakeholders to identify innovative, sustainable, and workable housing solutions to conquer the housing crisis.

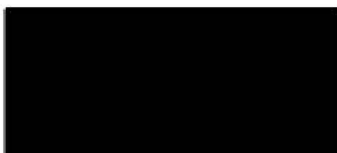
In total, the LGAQ has made 15 recommendations in its submission, and strongly calls for genuine consultation on any subsequent amendments to subordinate legislation.

We also enclose a letter from the Council of Mayors South East Queensland, noting their support for our submission.

As I understand, a public hearing regarding the Bill will occur on 9 November 2023. Unfortunately, I will not be available during this time, however, I would welcome the opportunity to discuss alternate suitable times with your secretary before the Committee's reporting date on 24 November 2023.

Please do not hesitate to contact Matthew Leman – Lead, Planning and Development Policy via email at [REDACTED] or phone on 1300 542 700 should you wish to discuss any aspect of this submission.

Yours sincerely



Alison Smith
CHIEF EXECUTIVE OFFICER

31 October 2023

Ms Alison Smith
Chief Executive Officer
Local Government Association of Queensland
25 Evelyn Street
Newstead QLD 4006
via email: alison_smith@lgaq.asn.au

Dear Alison,

RE: LETTER OF SUPPORT FOR THE LGAQ SUBMISSION TO THE HOUSING AVAILABILITY AND AFFORDABILITY (PLANNING AND OTHER LEGISLATION) AMENDMENT BILL 2023

I write to you in support of LGAQ's submission to the Housing Availability and Affordability (Planning and Other Legislation) Amendment Bill 2023.

Council of Mayors (SEQ) acknowledges the importance of a coordinated and joined-up approach when responding to the current housing crisis and continues to seek genuine State Government engagement and partnership with local government.

It should be noted SEQ councils are concerned about the swift progression of planning legislation changes in Queensland. Consultation timeframes and the Bill's limited clarity, as detailed in the LGAQ submission, are areas of particular concern.

Housing supply, diversity and affordability is a complex issue requiring evidence-based solutions, strong collaboration and coordination in development and implementation. While there is an immediate need to unlocking housing, it is important to ensure we avoid knee-jerk responses which undermine the integrity and intent of existing State, regional and local government planning policy.

Council of Mayors (SEQ) and our member councils remain eager to collaborate with the Queensland Government to ensure any proposed changes to the planning framework are well considered and effective at a regional and local level. This is essential to maximise benefit of any proposed responses to the challenges facing SEQ and the state more broadly.

I look forward to continuing to work closely with the Queensland Government and LGAQ on opportunities to engage in the development and implementation of responses to our region's immediate housing needs.

Kind regards,



Scott Smith
Chief Executive Officer
Council of Mayors (SEQ)



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

Submission to the State Development and
Regional Industries Committee

October 2023

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About the Local Government Association of Queensland (LGAQ)

The Local Government Association of Queensland (LGAQ) is the peak body for local governments in Queensland. It is a not-for-profit association established solely to serve local governments and their needs. The LGAQ has been advising, supporting, and representing local governments since 1896, enabling them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting local governments to people and places; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and providing them with the means to achieve community, professional and political excellence.

Partners-in-Government Agreement

The LGAQ, on behalf of all 77 Queensland local governments, is a signatory to a three-year Partners-in-Government Agreement with the State of Queensland.

The Agreement details the key principles underlying the relationship between the State and local governments and establishes the foundation for effective negotiation and engagement between both levels of government.

The Agreement acknowledges that local government is the closest level of government to the community, affecting the lives of everyday Queenslanders and acknowledging local government as a genuine partner in the Australian government system.

The intent of the Agreement was to continue the tradition of working in genuine partnership to improve the quality of life for all Queenslanders to enjoy. By identifying the roles and responsibilities of each party, it provides a solid foundation for effective negotiation and engagement between both levels of government.

The LGAQ is committed to working with the Queensland Government and will continue to be a passionate advocate for local governments, to serve our joint jurisdiction for the people of Queensland.

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

1.0 Executive Summary

The LGAQ welcomes the opportunity to provide feedback to the State Development and Regional Industries Committee on the *Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023* (the Bill).

Importantly, local government supports an effective planning system guided by appropriate legislation and balanced social, environmental, cultural and economic interests. Our sector is the level of government most connected to our local communities and should be recognised and empowered, as the sphere of government immediately responsible for land use planning and development assessment.

Local governments are acutely aware of the diverse, complex and multi-faceted housing challenges being faced by Queenslanders, the development industry, and regulators. Demand and need for housing in well-serviced locations is high, but so too are barriers to housing – such as increased materials costs, labour shortages and supply chain issues in a post-covid environment.

Despite being the most financially constrained level of government, councils have, and continue to invest considerable time and resourcing in:

- preparing and/or introducing various proposed planning scheme amendments as well as development incentive policies where they can afford to do so.
- streamlining development assessment processes to facilitate development and the achievement of 'ecological sustainability' (i.e. balancing economic, environmental and social outcomes), consistent with the purposes of the *Planning Act 2016*.
- offering a range of incentives and support for community housing providers deliver social and affordable housing.
- continuing to work in partnership with the State to develop and implement Local Housing Action Plans and local housing solutions.
- proactively planning for growth and change in local communities, as well as delivering, operating and maintaining public infrastructure that unlocks and facilitates development including housing, and
- providing a diverse and broad range of important services, in many cases above and beyond their statutory functions.
- exploring opportunity to develop council owned land through partnerships etc.

In response to the State Government's land and building audit, councils also identified over 800 local government owned sites across the State potentially suitable for housing developments.

In addition, the latest figures reported by the Queensland Government Statisticians Office (QGSO) for the March 2023 quarter, continue to show that councils are doing their job in facilitating land for housing, with 85,777 hectares of residential greenfield and brownfield land (greater than 2,500 m²) currently suitable for residential development across monitored regions of the State (which would open up 589,150 homes state-wide). In addition, the QGSO reports there are over 97,000 residential lots already approved by councils across Queensland, but not yet developed as at the March 2023 quarter.

Overall, while the stated intent behind the Bill (to improve the planning framework's responsiveness to housing supply challenges and support the delivery of affordable, well-located housing) is understood and supported in principle, the mechanisms through which this intent is proposed to be operationalised is of significant concern and cannot be supported in its current form. For instance, as currently drafted, proposed mechanisms are likely to increase regulatory burden and constrain the delivery of housing, while also eroding public trust in planning and government. As such, while some proposed amendments may be supportable in-principle, in operation, they will create considerable adverse impacts for local governments and Queensland communities.

In addition, the LGAQ is extremely disappointed with the lack of consultation associated with the Bill in its current form. The Bill is proposing substantial, state-wide amendments to the planning system which will affect all local governments and many Queenslanders. However, the consultation period set by the Committee, of 10 business days, is less than that which would apply to an impact assessable development application.

This consultation period does not have regard to the time local government officers require to review the Bill, draft a submission, brief Councillors, and obtain the necessary approvals to provide a submission. The limited timeframe is not in line with expectations that are set under the Partners-in-Government Agreement with the State. A 10-business day consultation period is not sufficient to consult across 77 councils on significant matters that affect most LGAs. As such, while all local governments will be impacted by the Bill, most will not be able to make a submission within the timeframes provided, and therefore, consultation outcomes cannot be considered truly representative or genuine.

The LGAQ has previously raised concerns with the quantum, scale and pace of amendments being made to the planning framework by the State Government, particularly since late 2022. These changes are occurring at a speed which does not allow adequate, genuine or meaningful consultation with local government, industry and the community, consideration of impacts or unintended consequences, or review and evaluation post-implementation to assess the effectiveness or otherwise of these measures.

The introduction of the Bill to further amend the planning framework is yet another example of rushed regulatory amendments that have not undergone a rigorous regulatory impact analysis through a Consultation Impact Analysis Statement.

It is also acknowledged that the Bill relies heavily on subordinate legislation to provide clarity and operationalise the powers established by the Bill. Through engagement with Planning Group, in the Department of State Development, Infrastructure, Local Government and Planning (DSDILGP), it is understood that amendments to the *Planning Regulation 2017* are currently being drafted and will be consulted on in "late January 2024". Due to local government elections scheduled for March 2024, local governments will be in caretaker mode from 29 January 2024, and the LGAQ is highly concerned with the approach to rush amendments through with limited or no opportunity for local government to make formal representations on proposed changes.

Due to our substantial and material concerns, the LGAQ cannot support the Bill in its current form, and requests that it be re-drafted in genuine consultation with local governments. As the peak body for all of Queensland's 77 councils, our approach is always to be solutions-oriented and to offer constructive policy proposals. As such, the LGAQ and Queensland councils have put forward a range of short, medium and long-term solutions in the 2023 Local Government Housing Strategy¹ that we ask to be considered. Legislation that is 'one size fits all' does not

¹ 2023 Local Government Housing Strategy – available online [here](#).

work in a state as diverse as Queensland, and the LGAQ seeks genuine consultation to help reflect Queensland's diversity and to mitigate unintended outcomes in advance – instead of retrofitting after the legislation process.

1.1 Recommendations

In total, the LGAQ has made 15 recommendations which are summarised below:

Growth area tools

- **Recommendation 1:** The LGAQ notes that, as currently drafted, the Urban Investigation Zone will not achieve its intended purpose. As such, the LGAQ recommends the Urban Investigation Zone not be progressed, and rather, consultation be conducted with local governments to identify reasonable alternatives to provide a 'holding pattern' while infrastructure planning takes place.
- **Recommendation 2:** If Recommendation 1 is not supported, the LGAQ recommends a new (expedited) pathway be established to apply and remove the zone immediately in an effective, timely manner.
- **Recommendation 3:** The LGAQ recommends that the State facilitated application pathway not be progressed - given the considerable risk to local government autonomy, transparency, and clarity posed. Rather, established mechanisms should be prioritised (such as Priority Development Area and Ministerial Infrastructure Designation processes) – before introducing new tools which are likely to confuse the industry, complicate planning, and erode public trust.
- **Recommendation 4:** If Recommendation 3 is not supported, the LGAQ recommends clear criteria be established, in consultation with local government, and prescribed in the *Planning Act 2016* to determine when a 'State priority' will be declared - to give certainty to local governments, the community, and development industry.
- **Recommendation 5:** If the State facilitated application pathway is progressed, the LGAQ recommends the *Planning Act 2016* be used to establish a head of power for the *Planning Regulation 2017* to create assessment benchmarks in consultation with local government for State facilitated applications, such as ensuring State decisions are conscious of local government infrastructure plans and servicing requirements.
- **Recommendation 6:** If the State facilitated application pathway is progressed as a response to the immediate 'housing crisis', the LGAQ recommends these powers be subject to a sunset clause of 3-5 years, to ensure legacy powers do not remain in the planning framework after they are needed.

Operational amendments

- **Recommendation 7:** The LGAQ recommends that Ministerial powers to direct amendments to planning schemes not be supported, noting that extensive and sufficient existing Ministerial direction powers already exist.
- **Recommendation 8:** If Recommendation 6 is not supported, the LGAQ recommends that Ministerial powers to direct amendments to planning schemes be altered, to clarify local governments' ability to locally refine state interests.
- **Recommendation 9:** The LGAQ recommends clarification be provided in the Bill, and a definition added to the *Planning Regulation 2017*, to ensure Temporary accepted development is genuinely 'temporary' in nature – ensuring permanent uses (such as slab-on-ground homes) are not approved as 'temporary' uses.
- **Recommendation 10:** The LGAQ recommends the Bill be amended, to ensure assessment benchmarks can be established to protect local heritage values and curtilage, where they differ to State heritage values.

Other critical matters

- **Recommendation 11:** The LGAQ recommends the State recognise and restore local governments' critical role in local land use planning, as the level of government closest to the community, and most able to respond to local interests.
- **Recommendation 12:** The LGAQ recommends future legislative amendments be consulted on in a manner that is genuine, and respects of the time needed for local governments to review, brief, and provide submissions on matters which significantly affect them.
- **Recommendation 13:** The LGAQ requests that any subsequent amendments to the *Planning Regulation 2017* (or any other subordinate legislation), are consulted on in a genuine manner for at least 30 business days, outside of any caretaker period.
- **Recommendation 14:** The LGAQ recommends that the Bill not be passed in its current form, given the significant and material concerns held by local governments regarding its operation and implications, and the considerable lack of genuine consultation.
- **Recommendation 15:** The LGAQ recommends the State Government should adopt and implement all actions identified in the 2023 Local Government Housing Strategy.

Please do not hesitate to contact Matthew Leman, Lead – Planning and Development Policy via email at [REDACTED] or phone on 1300 542 700 should you wish to discuss any aspect of this submission.

2.0 Introduction

The LGAQ welcomes the opportunity to provide feedback to the State Development and Regional Industries Committee the on the *Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023* (the Bill).

Overall, the LGAQ is extremely disappointed in the short timeframes for consultation on this Bill and does not support the Bill in its current form. The consultation period does not respect the time local government officers require to review the Bill, draft a submission, brief Councillors, and obtain the necessary approvals to provide a submission. As such, while all local governments will be impacted by the Bill, most will not be able to make a submission, and therefore, consultation outcomes cannot be considered truly representative or genuine.

The LGAQ is aware that key changes, as proposed by the Bill relate to:

- Growth area tools;
- Operational amendments;
- Development control plans; and
- Urban encroachment provisions.

In considering the proposed amendments, the provisions relating to Development control plans and Urban encroachment provisions do not present major concerns for local government. However, a number of the proposed changes relating to the introduction of new Growth area tools and Operational amendments to the *Planning Act 2016* cannot be supported by the LGAQ and should be re-drafted in genuine consultation with local governments.

In its current form, the LGAQ is concerned the Bill will:

- Create timely and costly barriers to development and impose considerable regulatory burden on local governments;
- Undermine local decision-making powers in land use planning and development assessment;
- Erode community trust in the planning system;
- Disregard community values and local interest in planning;
- Result in the loss of local heritage values; and
- Create loopholes for unintended adverse development to occur.

Primary concerns regarding 'Growth area tools' include that:

- The proposed Urban Investigation Zone will not achieve its intended purpose, will result in timely and costly barriers to development, will impose considerable regulatory burden on local governments and will not expedite development; and
- The proposed State facilitated application pathway will erode community trust in the planning system and government.

Regarding 'Operational amendments', it is noted that:

- New Ministerial powers to direct amendments to planning schemes will not respect or acknowledge community values or local interests in planning, further eroding trust in the planning system;
- Removing the ability of local governments to assess established benchmarks for dual listed heritage places will result in the loss of local heritage values (insofar as they differ to State heritage values); and

- As currently drafted, the Bill does not provide any assurance that powers to declare Temporary accepted development will be used for genuinely 'temporary' development, and therefore, will could create loopholes for unintended adverse development to occur.

While some proposed amendments can be supported in-principle (such as the intention to give local governments 'breathing room' to conduct infrastructure planning), as currently drafted, the Bill is not workable for local governments and should not be passed.

Further detail regarding these concerns, structured by the key changes cited above, is provided below. In addition, an overview of the LGAQ Policy Statement is also provided below (insofar as is relevant to this submission), to give further context to these concerns.

2.1 LGAQ Policy Statement

The LGAQ Policy Statement² is a definitive statement of the collective voice of local government in Queensland. The relevant policy positions of local government in the context of the Bill, are as follows:

Planning and Development

- 6.1.1 Strategic planning
 - 6.1.1.1 Local government should be recognised as the sphere of government immediately responsible for land use planning and development assessment.
 - 6.1.1.2 Local government supports an effective planning system guided by appropriate legislation and balanced social, environmental, cultural and economic interests
 - 6.1.1.4 Local government supports the use of prescriptive standards and assessment benchmarks in a local planning instrument, where appropriate, to provide certainty of development outcomes. The State Government can support this during state interest review processes.
 - 6.1.1.5 Local government opposes the devolution of land use planning matters to councils, where these matters are of interest to the State and should be considered and decided by the State Government.
 - 6.1.1.6 Local government opposes State Government land use planning policy or intervention that inhibits local decision making.
 - 6.1.1.11 Local government supports the ability to clearly identify uses appropriate to a particular area, including the ability to prohibit certain types of development.
 - 6.1.1.12 Local government supports the use of a standard structure, definitions, codes and other components common to all local planning instruments to improve consistency without compromising the ability of local governments to respond to local planning issues.
 - 6.1.1.13 Local government opposes the extent of the compensation provisions in current planning legislation, and only supports limited provisions for compensation based upon certain criteria being met before councils would be liable. Compensation rights should only be preserved where an applicant can establish that they have suffered an immediate and demonstrable loss. Claims for compensation should be eliminated where there is no substantive restriction on continuing use of the land for existing lawful purposes, and where the only loss is loss of the speculative possibility of future development for some other purpose.
 - 6.1.3.3 Local governments support flexibility in timeframes for local government assessment managers, when required, similar to the 'stop the clock' provisions already provided for applicants under the Planning Act 2016.

² LGAQ Policy Statement 2022 – <https://www.lgaq.asn.au/downloads/file/531/2022-lgaq-policy-statement>

- 6.1.3.5 All spheres of government should comply with the provisions of local planning instruments when undertaking development, inclusive of obtaining and complying with appropriate approvals, payment of relevant fees, and provision of required external infrastructure or financial contributions.
- 6.1.3.6 Local government opposes the use of Ministerial Call-In powers other than in limited cases where relevant to a matter of State Interest.
- 6.1.6.4 Local government acknowledges the role the built environment plays in community cultural identity and supports the preservation or adaptation of heritage places that is responsive to the aspirations of local communities.

Community Development

- 7.1.7 Housing
 - 7.1.7.1 Local government is committed to working in partnership with the State and Federal governments, and industry, to effectively address the challenges of housing affordability and supply. Councils are seeking the opportunity to identify and develop a range of innovative and fit for purpose strategies across all communities, to support growth and investment, improve liveability, and grow stronger and more diverse local communities.
 - 7.1.7.3 Local government will actively participate in forums and networks, where appropriate, that seek to establish good practice approaches to sustainable, accessible and affordable housing.

In the context of the LGAQ Policy Statement and given the breadth of challenges facing housing availability and affordability, it is imperative to recognise the critical role local governments play in local land use planning.

Furthermore, as articulated by the LGAQ Policy Statement, the State Government should agree with the principles of empowerment and of subsidiarity, which holds that decisions should be made by the lowest level of government capable of properly doing so. Intergovernmental relations should be conducted in a spirit of mutual respect and cooperation with an emphasis on partnership and a commitment to timely and frequent communication, with recognition of each other's roles and responsibilities.

It is requested that the State recognise this and respects the role of local governments as the level of government closest to the community – uniquely able to consider State interests and locally apply State directions in the context of local opportunities and challenges, and the interests of their local communities.

2.2 LGAQ Annual Conference Resolutions

In the context of the Bill, several resolutions have been passed by local governments at the immediate past and previous LGAQ Annual Conferences. These resolutions should be given regard by the State Development and Regional Industries Committee in their consideration of the Bill and are cited below.

Resolution 38 (2023) - Amendment to the Planning Regulation 2017- Residential land use definitions

The LGAQ calls on the State Government, in consultation with local government, to pass legislation to include new definitions within the Planning Regulation 2017 for:

1. *Smaller scale attached residential development (up to 6 dwellings); and*
2. *Build-to-rent developments.*

Consideration of this resolution should be given when drafting amendments to subordinate legislation, insofar as the resolution supports the objective of the Bill, to improve housing availability and affordability.

Resolution 39 (2023) - Amendment to the *Planning Regulation 2017* – Conditioning of covenants on property titles as part of the DA approval

The LGAQ calls on the State Government, in consultation with local government, to pass legislation to support local government to condition covenants on property titles to ensure that affordable or social housing outcomes in new developments are binding on successive owners of the dwelling.

As can be noted, this resolution also supports the objective of the Bill, and should be given due consideration.

Resolution 35 (2023) - Funding for the implementation of practical solutions to the housing crisis

The LGAQ calls on the State Government to partner with councils to fund the implementation of practical solutions to the housing crisis, particularly experienced in regional areas, as identified under Local Housing Action Plans (LHAPs).

It is noted that while LHAPs are being drafted by local governments (with the assistance of LGAQ), these LHAPs are constrained by a lack of funding to deliver the actions identified.

Resolution 119 (2023) - Access to Dedicated Housing Funding and Low-Interest Loans for Local Government

The LGAQ calls on the State Government to provide dedicated funding, including access to low-interest loans, for councils wanting to voluntarily undertake housing projects to deliver affordable housing outcomes where needed, similar to the dedicated funds available to community housing providers.

As can be noted by this resolution, local governments are willing partners, able to assist in conquering the housing crises. However, essential funding is necessary to facilitate these outcomes.

In addition, the following resolutions passed prior to 2023 are relevant:

Resolution 37 (2022) - Financial Sustainability Framework – alternative approach

*The LGAQ calls on the State Government to review the *Planning Act 2016* and the *Planning Regulation 2017* to allow local governments to include prohibited development categories in a local planning instrument (such as a planning scheme).*

Resolution 35 (2020) – Cost of Planning Appeals

*The LGAQ calls on the State Government for a comprehensive review of the current cost provisions of the *Planning & Environment Court Act 2016* with a view to including the ability for the *Planning & Environment Court* to award costs where a development proposal is found to significantly conflict with the planning scheme.*

Resolution 84 (2020) – Prescriptive Planning

- The LGAQ calls on the State Government to:*
- *Commit to developing a planning framework that:*
 - *provides certainty of outcomes;*
 - *the community understands; and*

- *allows for the use of prescriptive standards and assessment benchmarks in local government planning schemes where appropriate; and*
- *Initiate a broad education campaign explaining how planning in Queensland works, the roles of the State Government in determining planning matters and how the community can be involved in planning matters.*

Resolution 58 (2018) – Legislation – Advertising of Public Notices

The LGAQ calls on the State Government to make amendments to legislative requirements to allow public notices to be published using modern technology.

3.0 Growth Area Tools

In relation to the Growth area tools proposed by the Bill, the LGAQ has focussed its submission on those tools of most concern to local government. These include the Urban Investigation Zone and declaration and assessment of State facilitated applications.

Urban Investigation Zone

It is understood that the Urban Investigation Zone is intended to provide a 'holding pattern' for local governments, so they can conduct necessary infrastructure planning *before* development applications are received and require assessment. The LGAQ acknowledges this change recognises the time needed for infrastructure planning and coordination (with State and Federal governments) typically exceeds statutory timeframes stipulated for local governments to assess and decide development applications.

Whilst the State Government's intention for the Urban Investigation Zone is understood and appreciated in-principle, as currently drafted, the LGAQ is concerned that the operation of this zone will deliver limited (if any) value.

In operation, the Urban Investigation Zone can **only** be applied following a 'major amendment' process - which is a considerable undertaking - and may exceed 3 years.

As an example, if the State Government were to add land to the Urban Footprint before infrastructure planning had taken place (such as is proposed at Elimbah and Thornlands), development applications for urban purposes could be immediately (and lawfully) lodged over the land. At the time of lodgement, the development application 'clock' would start, and a local government would be required to assess and decide the application within statutory timeframes (which can only be extended *by agreement*).

As development applications for urban purposes can be lodged immediately following land's addition to the urban footprint, requiring local governments to undertake a 3+ year process to put the land in a 'holding pattern' is nonsensical.

Furthermore, while the intent to apply a prohibition on urban development from the time of a public notice about the change being published is appreciated, it is unlikely to be sufficient to prevent pre-emptive development applications from being lodged, which may compromise orderly and sequenced development. This is because land being added to an Urban Footprint by the State may be seen as a 'signal' to the development industry that a public notice about the Urban Investigation Zone is forthcoming - thusly prompting the urgent lodgement of out-of-sequence development applications before prohibitions are introduced.

Furthermore, if a local government were to consider applying the Urban Investigation Zone, this would likely be publicly accessible in Council meeting minutes. This would serve as a further 'signal' to the development industry, prompting the urgent lodgement development applications before prohibitions are introduced.

As such, for the Urban Investigation Zone to achieve its intended purpose, a new (expedited) pathway should be established, to ensure local governments can apply the zone immediately – especially where the zone is applied over land not already intended for urban purposes (such a rural or agricultural zoned land).

It should be noted that the LGAQ and local governments have been calling for the State to streamline plan making processes under the *Planning Act 2016* and Minister's Guidelines and Rules for several years (to expedite the delivery of housing, before issues reached 'crisis' proportions), however, these calls still remain unanswered. The proposed Urban Investigation

Zone's operation further compounds these concerns, by requiring local governments to undertake a 3+ year process to put land in a 'holding pattern', before they commence essential infrastructure planning.

Through the Bill, it is also proposed to amend the purpose of the Emerging Community Zone, to clearly differentiate from the purpose of the new Urban Investigation Zone. The new purpose of the Emerging Community Zone includes identifying land *'that is intended for an urban purpose in the future'*. As 'future' is not defined, it is not clear how this purpose differs from the purpose of any urban zone.

Furthermore, it is noted that the new Emerging Community Zone purpose (designed to differentiate from the Urban Investigation Zone purpose) will come into effect 12 months from commencement. This 12-month timeframe does not align with the 3+ year timeframe local governments will undergo to implement the Urban Investigation Zone, and therefore, should be reconsidered.

Local governments appreciate the housing crisis being faced in Queensland and are willing and able to assist in responding to these challenges. However, requiring local governments to undertake an extensive major amendment process to apply the proposed zone, will inhibit their ability to conduct their core functions and respond to the housing crisis. And as such, the operation of the proposed zone conflicts with the objective of the Bill.

In addition, as currently drafted, the proposed Urban Investigation Zone appears to be unnecessarily rigid and will remove local governments' ability to respond to changing circumstances in a timely manner. I.e., as currently drafted, the Urban Investigation Zone prohibits urban uses for a period of at least 5 years, while infrastructure planning takes place. However, if infrastructure planning were to take *less* than 5 years, the prohibition on urban uses would not be lifted without undertaking a planning scheme amendment process. This drafting could, unintentionally, prevent development-ready land from facilitating much-needed housing supply.

- **Recommendation 1:** The LGAQ notes that, as currently drafted, the Urban Investigation Zone will not achieve its intended purpose. As such, the LGAQ recommends the Urban Investigation Zone not be progressed, and rather, consultation be conducted with local governments to identify reasonable alternatives to provide a 'holding pattern' while infrastructure planning takes place.
- **Recommendation 2:** If Recommendation 1 is not supported, the LGAQ recommends a new (expedited) pathway be established to apply and remove the zone immediately in an effective, timely manner.

Declaration of State facilitated applications

It is important to acknowledge that there is no 'one-size-fits-all' response to the housing crisis, and therefore, it is critical to maintain the autonomy of local government to make decisions (in consultation with their local communities). Amendments proposed by the Bill (particularly new Ministerial powers and the 'State facilitated application' pathway) do not respect this and lack the necessary clarity for local governments to understand how new powers and processes will be used.

The Bill also lacks necessary clarity in several other regards. For instance, the Bill and supplementary materials do not establish, comprehensively, what will be considered a 'State priority', what assessment benchmarks a 'State facilitated application' will be assessed against, whether local governments will be able to locally refine Ministerial directions, or whether Temporary accepted development will be limited to genuinely 'temporary' development.

With regards to the proposed 'State facilitated application' pathway, the Explanatory Notes associated with the Bill state that: *"These powers are limited to where the Minister is satisfied that the development meets the criteria prescribed by the regulation and where application assists in delivering development that is a priority to the State"*.

As discussed above, this provision relies on the *Planning Regulation 2017* to explain what 'criteria' development must meet. As amendments to the *Planning Regulation 2017* are not being consulted on (at this stage), local governments cannot be sure how or when these powers will be used. As such, the Bill lacks fundamental transparency necessary for good governance.

Furthermore, the Bill does not explain what, or why, development will be considered a 'State priority', with the exception of a single example, namely *"such as affordable housing to ease housing challenges"*. This lack of clarity is of significant concern for local governments, who cannot be sure how or why State priorities will be declared.

It is unclear whether State priorities will be determined on a case-by-case basis (with or without notice), prescribed by regulation, publicly displayed on a departmental website, or otherwise. This limits local governments' ability to anticipate, plan for and respond to State priorities.

The ethics and transparency of establishing State priorities on a (potentially) case-by-case basis is also questioned.

- **Recommendation 3:** The LGAQ recommends that the State facilitated application pathway not be progressed - given the considerable risk to local government autonomy, transparency, and clarity posed. Rather, established mechanisms should be prioritised (such as Priority Development Area and Ministerial Infrastructure Designation processes) – before introducing new tools which are likely to confuse the industry, complicate planning, and erode public trust.
- **Recommendation 4:** If Recommendation 3 is not supported, the LGAQ recommends clear criteria be established, in consultation with local government, and prescribed in the *Planning Act 2016* to determine when a 'State priority' will be declared - to give certainty to local governments, the community, and development industry.

Assessment of State facilitated applications

Related to the above, it is also unclear how State facilitated applications will be assessed. At present, it is not clear if assessment benchmarks will be established, and if so, what those assessment benchmarks will be.

Using 'affordable housing' as an example, under Queensland's planning framework, local governments establish assessment benchmarks by: undertaking detailed housing needs assessments, developing Housing Supply Statements, developing Local Housing Action Plans, Developing Housing Strategies, considering the requirements of the relevant regional plan, considering the requirements of the *State Planning Policy 2017*, undertaking multiple rounds of consultation, and undergoing State Interest Review. As a result of this, local government assessment benchmarks can be considered a balanced and robust reflection of state, local and community interests.

Under the Bill, the State will be able to establish assessment benchmarks (or not) without any rigorous or robust consideration of local and community interests. This is considered highly inappropriate, especially as local governments will be responsible for fielding complaints, managing compliance, and assessing and deciding 'downstream' applications, following a State facilitated approval.

Furthermore, it is noted that the proposed provisions present the risk of undermining the planning system and public trust. If the State is able to disregard planning instruments and establish assessment benchmarks (or not) without any clear or transparent process, the community may lose trust in the planning system and government, and question why these instruments exist.

At the very least, assessment benchmarks for State facilitated applications should be prescribed by regulation and made publicly available - to ensure State decisions are made with ethics, integrity and transparency.

Related to this, it is also noted that, as currently drafted, there is no requirements for a Minister or Chief Executive to consult with local government or consider local infrastructure needs and sequencing when declaring State facilitated applications or when directing planning scheme amendments. This presents a particular concern for local governments who, presumably, will be responsible for negotiating Infrastructure Agreements falling out of State facilitated decisions.

As such, there is a clear need for the Bill's drafting to be amended, to ensure these considerations (which are critical to underpin development) are made.

- **Recommendation 5:** If the State facilitated application pathway is progressed, the LGAQ recommends the *Planning Act 2016* be used to establish a head of power for the *Planning Regulation 2017* to create assessment benchmarks in consultation with local government for State facilitated applications, such as ensuring State decisions are conscious of local government infrastructure plans and servicing requirements.

As discussed above, it is not clear how, when or why a 'State priority' will be declared, and how the State facilitated application pathway will be used. At present, a single example is included in the Explanatory Notes associated with the Bill, suggesting these powers will be used to respond to current housing challenges.

If the State's intention is to use these powers to respond to the immediate housing crisis, it would be reasonable to expect a sunset clause to be applied, to ensure 'legacy powers' do not remain in the planning framework after they are needed. This approach would be consistent with recent changes to the planning framework in late 2022.

- **Recommendation 6:** If the State facilitated application pathway is progressed as a response to the immediate 'housing crisis', the LGAQ recommends these powers be subject to a sunset clause of 3-5 years, to ensure legacy powers do not remain in the planning framework after they are needed.

4.0 Operational Amendments

In relation to the Operational amendments proposed by the Bill, the LGAQ has focussed its submission on those amendments of most concern to local government. These include Ministerial powers to direct amendments to planning schemes, Temporary accepted development, and dual-listed heritage places.

Ministerial powers to direct amendments

The lack of essential clarity and transparency is not limited to State priorities and State facilitated applications. It is also unclear how the proposed Ministerial powers to direct amendments to planning schemes will operate, and how necessary these powers are – given the Minister’s existing powers under Section 26 of the Minister’s Guidelines and Rules.

At present, under the Queensland planning framework, local governments can consider *how* to apply State interests in their local area, given their unique local knowledge and context, and can ‘locally refine’ these matters.

This is an essential function of local government, as uniform planning provisions may not be appropriate throughout Queensland. Furthermore, given their position as the level of government closest to the community, local governments are uniquely positioned to consider local interests, in ways the State cannot.

However, under the Bill, it is not clear whether local governments’ discretion to apply their local knowledge to State interests will be maintained.

For instance, at present, under the *State Planning Policy 2017* and *South East Queensland Regional Plan 2017* (ShapingSEQ), local governments are required to facilitate higher density development in well-serviced locations.

‘Higher density development’ can be achieved in a multitude of ways. For instance, in an area characterised by 800sqm development sites, a local government could decide to facilitate higher density development by:

- Facilitating ~100sqm ‘micro lot’ development (which may be appropriate in low-rise contexts); or
- Allowing 8-storey ‘one per floor’ apartment complexes (which may be appropriate in premium high-rise contexts).

Each of these development outcomes achieves the same level of density and the State interest. And, under the current planning framework, a local government would be able to determine, based on their unique local knowledge, which typology is appropriate in their relevant sub-markets.

Maintaining this ability for local governments to locally refine State interests is essential. However, under the current proposal, it is not clear whether a Minister will use their powers to:

- Direct a local government to “facilitate higher density development in well-serviced locations”; or
- Direct a local government to “introduce a minimum height limit of 8 storeys in X location”.

To respect the knowledge local governments offer, it is imperative that new Ministerial powers are used for the former, rather than the latter. However, this degree of certainty is not yet offered by current drafting.

- **Recommendation 7:** The LGAQ recommends that Ministerial powers to direct amendments to planning schemes not be supported noting that extensive and sufficient existing Ministerial direction powers already exist.
- **Recommendation 8:** If Recommendation 6 is not supported, the LGAQ recommends that Ministerial powers to direct amendments to planning schemes be amended, to clarify local governments' ability to locally refine state interests.

Temporary accepted development

On the matter of clarity, local governments also consider it important to ensure 'Temporary accepted development' provisions are limited to genuinely 'temporary' development.

As articulated by the Explanatory Notes associated with the Bill, the Bill will establish: *"a head of power for the Planning Regulation to declare that a material change of use of a premises is temporary accepted development for a stated period and does not require development approval"*. As discussed above, because amendments to the *Planning Regulation 2017* are not being consulted on (at this stage), local governments cannot be sure how or when this power will be used.

Of particular concern is the risk that permanent uses (such as slab-on-ground homes) will be declared 'Temporary accepted development' for a 'stated period'. After this period expires, the development may become unlawful, and local governments may be required to take compliance enforcement action - which will be particularly problematic where development cannot be readily relocated or removed.

This lack of clarity could be resolved by confirming that the provision will only apply to development that can be readily re-located or removed within 24 hours, does feature 'slab-on-ground' construction, or is not connected to a town water supply (for instance).

- **Recommendation 9:** The LGAQ recommends clarification be provided in the Bill, and a definition added to the *Planning Regulation 2017*, to ensure Temporary accepted development is genuinely 'temporary' in nature – ensuring permanent uses (such as slab-on-ground homes) are not approved as 'temporary' uses.

Dual-listed heritage places

With regards to the operation of the Bill, local governments have also raised concerns regarding how dual listed heritage places will be considered. At present, the Bill seeks to prescribe that a local categorising instrument may not include assessment benchmarks for a Local heritage place that is also considered a Queensland heritage place. This is said to remove 'duplication' of assessment.

Whilst the intent to remove duplicative assessments is understood and appreciated in-principal, the current drafting will have much broader implications. I.e., in circumstances where local heritage values *differ* from State heritage values (and therefore do not *duplicate*) the current drafting will prohibit local governments from protecting their local heritage values.

For example, while the State may consider a building to have heritage value, a local government may consider the building *and its grounds* to have heritage value. As such, State heritage protections may allow for subdivision and redevelopment of the grounds, whereas local heritage protections may not.

If the State's intention is to remove 'duplication' of assessment, this should be reflected in drafting – rather than broader prohibitions which limit local governments' ability to protect local heritage values.

- **Recommendation 10:** The LGAQ recommends the Bill be amended, to ensure assessment benchmarks can be established to protect local heritage values and curtilage, where they differ to State heritage values.

5.0 Other Critical Matters

The LGAQ understands the Bill is intended to help address the 'housing crisis' being felt in much of Queensland, and as such, appreciates the urgency of the Bill. Notwithstanding, the consultation period (10 business days) is a significant concern for local governments. This consultation period does not respect the time local government officers require to review the Bill, draft a submission, brief Councillors, and obtain the necessary approvals to provide a submission.

While Bill is proposing substantial, state-wide amendments to the planning system which will affect all local governments and many Queenslanders, it is being consulted on for a lesser period than an impact assessable Development Application. The integrity of a planning system which allows sweeping, state-wide changes to be notified for less time than a boundary realignment (for instance) is questioned.

While all local governments will be significantly affected by the Bill, most will not be able to make a submission. As such, this consultation process cannot be considered genuinely representative of views held by those affected.

Notwithstanding, the LGAQ has spoken with local governments regarding the Bill, and received written feedback, and makes this submission on their behalf.

- **Recommendation 11:** The LGAQ recommends the State recognise and restore local governments' critical role in local land use planning, as the level of government closest to the community, and most able to respond to local interests.
- **Recommendation 12:** The LGAQ recommends future legislative amendments be consulted on in a manner that is genuine, and respects of the time needed for local governments to review, brief, and provide submissions on matters which significantly affect them.

Furthermore, upon reviewing the Bill, it is evident that critical detail regarding its operation will be included in subsequent amendments to the *Planning Regulation 2017* - which are not yet available for review. Given the Bill's reliance on the *Planning Regulation 2017*, this lack of transparency is particularly concerning.

Through discussions with Planning Group, it is understood that consultation on amendments to the *Planning Regulation 2017* will occur in "late January 2024". This consultation plan is considered highly inappropriate, as local governments will be in 'caretaker mode' in late January, in the lead-up to 2024 local government elections. As such, no local government will be able to make a submission on proposed amendments to the *Planning Regulation 2017* - which are critical to the operation of the Bill.

- **Recommendation 13:** The LGAQ requests that any subsequent amendments to the *Planning Regulation 2017* (or any other subordinate legislation), are consulted on in a genuine manner for at least 30 business days, outside of any caretaker period.
- **Recommendation 14:** The LGAQ recommends that the Bill not be passed in its current form, given the significant and material concerns held by local governments regarding its operation and implications, and the considerable lack of genuine consultation.
- **Recommendation 15:** The LGAQ recommends the State Government should adopt and implement all actions identified in the *2023 Local Government Housing Strategy*.

6.0 Conclusion

Overall, while the LGAQ can appreciate the intent of the *Housing Availability and Affordability (Planning and Other Legislation) Amendment Bill 2023*, the Association has serious concerns regarding the consultation, clarity and operation of the Bill. Therefore, the LGAQ cannot support the Bill as currently drafted, and would welcome the opportunity to further discuss the range of short, medium and long-term solutions identified in the LGAQ's 2023 Local Government Housing Strategy³.

³ 2023 Local Government Housing Strategy – available online [here](#).