

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

Submission No: 20
Submitted by: Council of the City of Gold Coast
Publication:
Attachments:
Submitter Comments:

From: [REDACTED]
To: [State Development and Regional Industries Committee](#)
Cc: [REDACTED]; [REDACTED]; [REDACTED]
Subject: Officer feedback (City of Gold Coast) on the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023
Date: Tuesday, 31 October 2023 11:26:18 AM
Attachments: [image002.png](#)

Dear Committee Secretary

We welcome the opportunity to provide comment on the *Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023* (the Bill). With regard to the instructions for a submission, please note this is an officer level submission for the City of Gold Coast and contact details are provided below.

The Bill proposes a significant number of changes to a variety of legislation. While many of the proposed changes have been consulted on previously and are administrative or minor improvements, there are a number of key changes proposed that raise concerns. Please find below feedback on the Bill prepared by City of Gold Coast officers.

Consultation timeframes

- Undertaking a review of the complex material in the timeframe provided has been very difficult. It is recommended that future consultation on any proposed legislative change should be at least 30 business days for each phase to enable appropriate review and time to prepare a submission. This is particularly important where new information is included.

Growth area tools

- **Reserve power – State facilitated application**
 - **Lack of consultation** - The proposal to create a new reserve power for a State facilitated application has not been previously proposed or consulted. It is recommended that this component be removed from the Bill until appropriate consultation occurs. Importantly all information pertaining to the proposed reserve powers should be clearly outlined during any future consultation.
 - **Detailed information** - insufficient information has been provided to determine the potential consequence associated with the proposed reserve power. More information/clarity is needed about the assessment criteria and the assessment process for this proposed reserve power.
 - Clear criteria must be established (and consulted on) to determine when a 'State priority' can be declared.
 - Assessment criteria and associated benchmarks must be defined including consideration of relevant local matters.
 - The State Government fact sheet outlines the process will include consideration of State and local interests but only references the State Planning Policy, regional plan, purpose statements of the State Development Assessment Provisions. There is no reference to the relevant planning scheme. It is recommended that should the reserve power be retained it should require consideration of the relevant planning scheme as part of the assessment.
 - Further information is required on the proposed 'streamlined process' including what timeframes will be followed and how will local governments be incorporated into the process?

- **Local government responsibilities** – Further information is required on the impact to local governments associated with the proposed reserve powers.
 - The fact sheet states that ‘through this process, applications are assessed holistically and consider the State Planning Policy, relevant Regional Plans and the purpose statements for the State Development Assessment Provisions. State agencies and local governments will play a role by providing technical advice to ensure that State interests and local government priorities are integrated in the assessment of a State facilitated application.’
 - What kind of advice is required? How will this advice be considered and responded to? Does this require officers to duplicate assessment being undertaken by the State and assess against the scheme or some other provisions? In what timeframe must this advice be provided? What fees will be paid to cover this assessment?
 - Reading the Minister’s Declaration and State Facilitated application powers combined, it is apparent that the original decision maker can (through a Declaration) be required to ‘provide all reasonable help’ by assessing part or all of the subject application. This process creates uncertainty for the ability of City officers to act on the Delegations they are granted by the CEO under the Local Government Act. This is particularly the case if the powers under new section 106J(3) apply to the original decision maker, being the removal of the relevant decision-making provisions under the Planning Act 2016 which form the heads of power and authority of the Delegations assigned to relevant City Officers. It is unclear upon what basis City officers would be able to exercise their Delegations to support the Ministers powers under a Delegation and as such further information is required on this matter.
 - The Explanatory material outlines that an application may be considered in part or in full. How will a part assessment of an application be undertaken? How can local government complete our assessment of the remainder of the application in isolation of another part?
- **Constraints** - It is unclear how constraints, including matters of Local and State environmental significance and natural hazards, will be assessed under the proposed call in powers. Further information is required about how matters of State and Local environmental significance (including application of offsets for local values) will be considered. This information should be clearly outlined as part of future consultation.
- **Urban Purpose** - Currently the Bill identifies that the Minister may make the declaration only if three tests are met. One of these tests ‘is for an urban purpose’. An ‘urban purpose’ is defined as:

Urban Purpose means a purpose for which land is used in cities and towns— (a) including residential, industrial, sporting, recreational and commercial purposes; but (b) not including rural residential, environmental, conservation, rural, natural or wilderness area purposes.

The Urban Purpose test is too broad, and it is strongly recommended that this be amended to be urban purpose within an urban area.
- **Infrastructure charges** - The ability for local governments to levy infrastructure charges on State facilitated development applications is supported, however, more information is required to determine how the delivery of infrastructure will be considered for large development approvals

when approved through the State facilitated application process.

- It is recommended that the bill should seek to strengthen consideration of local infrastructure needs/sequencing in relation to the use of any new development assessment pathways/ministerial powers.
- Will application of infrastructure charges be coordinated by or through local government infrastructure agreements or through another process?
More information is required, and it is recommended that these reserve powers are not supported until such time as this information is provided.
- **Third party appeal rights** – The ability to appeal an impact assessable application underpins the planning process. The blanket removal of these rights is not supported. Should the loss of appeal rights be retained for a State facilitated application, how will the costs of the appeal to date be attributed where an appeal is already underway?
- **Urban Investigation Zone**
 - It is recommended that State facilitated applications not be permitted within the Urban Investigation Zone.
 - Should State facilitated applications continue to be permitted within and Urban Investigation Zone, further information is required about the process that will be applied i.e. How will the delivery of trunk infrastructure be considered? It is recommended that this matter be considered before finalising legislation to ensure appropriate delivery of infrastructure.
 - Will Urban investigation zones only be identified by local governments following a considered process or can they be imposed by the State Government? If so, this has the potential to add significant, unplanned impact on resources for local governments.
 - It is recommended that the identification of suitable areas is left to local governments as they are best placed to plan for their communities.
- **Powers to acquire land**
 - This tool confers power to the Minister to acquire land and create easements for development infrastructure, when it is essential to facilitate development where agreement has not been able to be negotiated with the owner. It is agreed that this would be a useful means to unlock development potential. More information is required about the process in identifying corridors and types of applicable development infrastructure to be provided.
- **Ability to direct a local government to amend a planning scheme**
 - Under the Queensland Planning framework, it is well established that the State and Local governments share the responsibility for delivery and operation of the key planning systems (plan making, development assessment and dispute resolution). Under this framework, the role of the State Government is to articulate the State's interests in plan-making to be delivered through local government planning schemes and establish the plan making processes which include minimum requirements for community engagement in plan-making. The Local government prepares its local planning instruments to guide growth and development in each local government area. Under this framework, the local planning scheme is the primary document setting out plans for managing growth and change in its local government area within Queensland.

This framework is designed to be fair, balanced, transparent and accountable, whilst allowing the local community to understand the rights they have for the use of their land. Supporting the function of the plan-

making framework, the City of Gold Coast endeavours to maximise community participation in plan making through the use of well-established engagement and consultation protocols. New section 26A(3) of the Bill (*Planning Act 2016*) represents a potential shift in the transparency underpinning this collaborative approach, which has the potential to erode the ability of the Local government to represent the aspirations and needs of its community and build trust through conveying the basis of ongoing amendments to the City Plan.

The Explanatory notes confirm the Power of the Minister to direct particular amendments to a planning scheme under new section 26A(3) of the Bill will be limited and following adequate public consultation. However, it is unclear if these Ministerial directions are envisaged to deliver State government endorsed policy changes or to reinforce those interests already contained in the State Planning Instruments. It is noted the detail on the Minister's directions powers are varied from that previously contained in the April 2023 Consultation paper. Specifically, the potential issue of a direction to amend a planning scheme to reflect a State government endorsed policy is no longer identified, which is supported.

- Further information is required to identify when further (adequate) public consultation would be required where new State interests are brought forward by way of an update to the State Planning Instruments.
- For transparency, accompanying changes should be included in the suite of legislative revisions if the Minister's direction powers are intended to implement a State Interest not already contained in the State Planning Instruments.
- It is recommended that the Bill be amended to reflect that the origin of the need for change should be one of the existing State instruments.
- Clarification is required on what level of public consultation would be considered 'adequate'
- If these powers are retained, it is recommended that the proposed powers should be amended to ensure that local governments' are able to locally refine State interests.
- There does not appear to be consideration for the need to address local interests that are impacted by a direction to amend a planning scheme. For example, should the State Government direct an amendment to a scheme that removes mapping (because the value is no longer considered a State interest) it could leave a vacuum in the scheme for a local value that would otherwise be mapped. The Local Heritage Value vs State Heritage value is a good example of this. It is recommended that where a direction to amend a planning scheme will result in a flow on impact to a local interest – the powers should not apply unless the ability to amend the local value is also permitted.

- **Local Heritage**

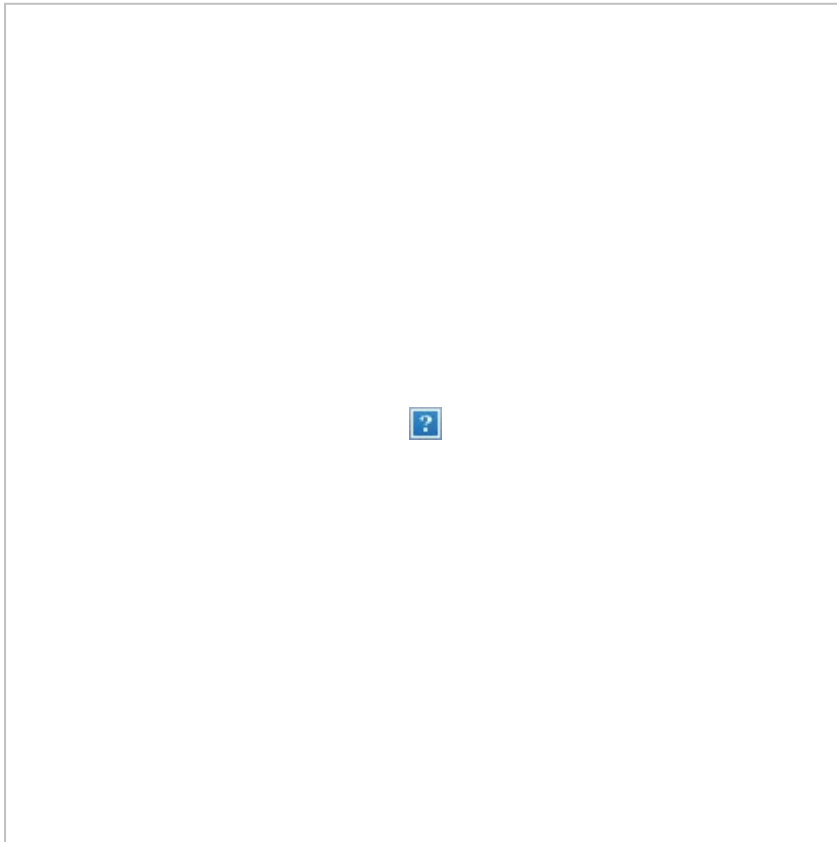
- It is recommended that the Bill be amended to ensure assessment benchmarks can be established to protect local heritage values and curtilage, where they differ to State heritage values.

Thank you for the opportunity to provide comment on the proposed Bill. Should you have any queries, or wish to discuss the above, please don't hesitate to me on the details below.
Kind regards

Samantha Bonney
Coordinator Regional Planning

Planning & Environment Directorate
City of Gold Coast


PO Box 5042 GCMC QLD 9726
W cityofgoldcoast.com.au



Council of the City of Gold Coast - confidential communication

This email and any files transmitted with it are confidential and are intended solely for the use of the addressee. If you are not the intended recipient be advised that you have received this email in error and that any use, dissemination, forwarding, printing or copying of this email and any file attachments is strictly prohibited. If you have received this email in error, please immediately notify us. You must destroy the original transmission and its contents. Before opening or using attachments, check them for viruses and defects. The contents of this email and its attachments may become scrambled, truncated or altered in transmission. Please notify us of any anomalies. Our liability is limited to resupplying the email and attached files or the cost of having them resupplied.