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

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

Brisbane Residents United submission to the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023

Thank you for the opportunity to make a submission to the State Development and Regional Industries Committee re this inquiry.

This submission is made on behalf of Brisbane Residents United (BRU), Brisbane's peak body for community resident actions groups. Whose purpose is to:

- Represent Brisbane and surrounding district residents and provide them with a united voice to Governments on matters pertaining to urban planning and development.

- Act as a resource centre, facilitating information sharing across established and start-up local resident associations.

BRU is a non-partisan and not-for-profit incorporated association that represent the interests of the broader community.

Introduction

BRU has reviewed the draft Bill and Explanatory Note for this Bill. In summary, our submissions are:

- this Bill is premised on the wrong assumptions;
- consultation with the public has been limited and the provision of relevant material is incomplete;
- State facilitated applications are an unnecessary duplication of existing powers; and
- there are a range of higher priority issues the government should address in dealing with the current housing shortage.

This Bill is premised on the wrong assumptions

The State Government's has identified red tape, administrative delays and outdated planning instruments as matters justifying the proposed amendments to the Planning Act. These are the reasons given for increasing the powers of the State over and above those of local councils and the community by substituting the chief executive in place of local councils as decision-maker for particular development and in so doing eliminating any scope for impact assessable development (including third party appeal rights).

We argue the premises underlying the Bill are not supported by the evidence. The LGAQ has informed us there are currently 60,000 approved developable blocks across SEQ[1] and 120,000 units already approved. It is the State governments lack of investment in social housing and indeed the selling off for many years of previously state owned social housing that has had a devastating cumulative effect on the housing market and the availability of social and affordable housing. Speculative land banking, supply bottlenecks created by COVID and current economic circumstances (high interest rates etc.) are the main reasons driving a shortage in housing supply.

The State Government could increase housing supply tomorrow by limiting the amount of time development approvals are valid. If an approval is not substantially acted upon in a reasonable (say one year) period of time, the approval lapses unless there are very good reasons (inability to adequately finance not being one of them) to extend. The development industry is used to the carrot of decreased infrastructure charges it may be time for a stick. The community is tired of paying the true cost of infrastructure while infrastructure charges ,already inadequate, are decreased by councils and the state government to increase developer profits.

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[1] Poulson, J, "Vacant land shame: 100k blocks sit idle as housing crisis deepens" (26/08/23) Courier Mail at: https://www.couriermail.com.au/news/queensland/vacant-land-shame-100k-blocks-sit-idle-as-housing-crisis-deepens/news-story/68b4dd9969709af84602581065fb2832

See also: OSCAR, *OSCAR Recommendations on Addressing Housing Affordability and Availability Crisis Pursuing Strategic Directions arising from the Housing Summit November* (07/12/2022)

The problem is NOT unwarranted delays in assessment procedures or outdated planning instruments. It is our belief the extraordinary measures proposed in this Bill will not speed up the supply of new housing in any material way. Instead, they will further undermine the role of local elected councils and exclude absolutely any meaningful role for the community.

The Committee should also note comments by former CEO of the LGAQ Mr Greg Hallam questioning claims that state and local governments are holding up development. "By wide acclaim Queensland has the most permissive planning legislation in the country" says Mr Hallam.[2]

The development industry and government are increasingly excluding the community from participating in the development of their areas and the results have been the current mess. To double down with the same sort of actions that have brought us to our present predicament would seem to be the height of folly and poor governance. Government uses existing residents funds to provide the infrastructure needed to ensure development. This is a burden the development industry is increasingly attempting to shift to the community to increase developers already substantial profits.

It is a reflection of how government has increasingly sort to exclude the community from all input into government decisions. We have been informed that we have to apply through the right to information system to find basic information that should be freely and transparently available from the Department of Communities.

Consultation with the public has been limited and the provision of relevant material is incomplete

Contrary to the assertions of the Explanatory Note, we, as interested and engaged members of the public, were not consulted about this Bill prior to the current brief consultation period.

Restriction of rights to appeal

The Bill includes provisions to not allow third party appeals for State facilitated applications. This continues an unhealthy trend which is evident in other Queensland legislation which facilitates State sanctioned development approvals, such as approvals in Priority Development Areas and approvals through Ministerial Infrastructure Designations. The Explanatory Notes include no evidence regarding the necessity for continuing to restrict third party appeal rights in Queensland.

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[2] Hallam, G "Australia has 13 million empty bedrooms - so why are we only talking about building more?" 18/10/2023 In Queensland at: https://inqld.com.au/opinion/2023/10/18/australia-has-13-million-empty-bedrooms-so-why-are-we-only-talking-about-building-more/

The provision of relevant material is incomplete

We note we have not been given access to the proposed regulation which will state additional, presumably material, requirements for the exercise of the State facilitated application processes (cl.106D).

State facilitated applications are an unnecessary duplication of existing powers

We believe the proposed provisions on State facilitated applications are an unnecessary duplication of existing ministerial call in powers. The SPP identifies housing supply and affordability as a State interest so the Government already has jurisdiction to deal exclusively or in part with applications of State interest relating to an urban purpose - despite the assertion at p.4 of the Explanatory Note. As the comparison below indicates, the proposed new powers are substantially the same as the powers pertaining to ministerial call-ins. Where they offer a more targeted framework, we argue those or similar requirements should be assimilated into the ministerial call in power as well or in substitution to the proposed new head of power.

As table 1 below demonstrates, the only significant points of difference are:

1. A fuller list of criteria determining whether an application can be declared a state facilitated application – including reference to regulations we have not been given access to. (cl 106D)
2. More specific decision-making criteria which ensures relevant planning instruments will be considered (this is not a requirement for a call-in application) (cl 106J).
3. A duty to give notice of the decision on the website as well as to specific persons (including submitters) (cl 106M).
4. A requirement to state the number of declarations made in any year in the report to parliament (cl 106N)

As each of these requirements is, in our view, a welcome improvement on the procedure for a ministerial call in, we suggest the more appropriate course of action is to amend the ministerial call in power to include these or equivalent requirements.

What the government should really be focussing on

We believe the current housing shortage has multiple causes and requires **holistic, cross sectoral and meaningful solutions**. As stated in our submission to the Department of State Development, Infrastructure, Local Government and Planning (DSILGP) on the 2023 draft Shaping SEQ Update review, we believe the Government needs to focus on, among other things:

- **Increasing and facilitating the supply of affordable rental accommodation from existing housing stock** (empty nesters, holiday homes, AirBNB etc.). It is not

easy to rent out under-utilised property – the Government could play a much greater role in simplifying the red tape and bureaucracy involved in this part of the market.

- **Encouraging well designed gentle densification across all our urban neighbourhoods** - allowing people to find affordable accommodation closer to where they want to live.

- **Implementing a code for sustainable and liveable development** that will ensure new housing stock addresses concurrent crises (climate change, biodiversity loss, mental health and increasing obesity) and fits harmoniously into existing neighbourhoods.

Other reform recommendations made by SEQ Community Alliance (SEQCA) in its recent submission to the DSDILGP on the SEQ regional plan Update and of relevance to law-makers *genuinely* concerned about housing supply issues are listed in Appendix 2.

Operational amendments

The Explanatory Notes say the Bill would allow the Planning Minister to direct a local government to amend a local planning scheme to reflect a state interest that has been subject to adequate public consultation.

It appears that the determination of the "adequacy" of public consultation is at the discretion of the Minister.

We submit that public consultation by State and local government about planning and development approval matters is often perfunctory and fails to achieve genuine community engagement. We suggest that the community's rights under the Planning Act should not be diminished in this way.

BRU supports measures and actions that improve the effectiveness of the planning system. We consider that an effective development assessment process is an important component of various measures to ensure that local government operates in the public interest. The State planning system needs to be utilised in the most effective manner to bring maximum benefit to the community as a whole. We are happy for our submission to be made public and would welcome the opportunity to appear at one of the Committee's public hearings. Should you require any further information I can be contacted on [redacted].

Yours sincerely
Elizabeth Handley
President.
The Brisbane Residents United Inc Steering Group

Appendix 1: Comparison of ministerial call in powers and proposed state facilitated applications

Proposed State facilitated applications	Ministerial call in powers
Notice of proposed declaration If the Minister proposes to declare a relevant application is a State facilitated application, the Minister must give notice of the proposed declaration to— (a) the applicant; the local government or other decision-maker for the application; any referral agency of the application and any submitters the minister is aware of at the time the notice is given. The notice must invite representations about the decisions within the stated period of at least 15 business days after the day the notice is given (the representation period); and (g) any other matter prescribed by regulation. The Minister must consider any representations made during the representation period in deciding whether to make the declaration.	**Seeking representations about proposed call in** If the Minister proposes to call in an application, the Minister must give a notice (the proposed call in notice) seeking representations about the proposed call in to the decision-maker; the applicant; each referral agency and any submitters for the application who the Minister is aware of when the notice is given. (3) A regulation may prescribe matters in relation to the giving of the notice, including— (ii*) any appeal period in relation to the application*; and (d) the period (the representation period) within which a person may make representations about the proposed call in. The Minister must consider any representations made during the representation period before deciding whether to call in the application.
106D Declaring State facilitated applications The Minister may, within 10 business days after the day the representation period ends, declare that the relevant application is a State facilitated application. The Minister may make the declaration only if the Minister considers the application will assist in delivering development that is for an urban purpose; and is an identified priority for the State; the application complies with the criteria prescribed by regulation; and (c) the Minister is satisfied (having regard to any matter the Minister considers relevant) it is appropriate for the chief executive to assess and decide all or part of the application instead of the decision-maker for the application.	**103 Call in notice** The Minister may call in an application by giving a notice (a call in notice) to relevant parties within 20 business days after the end of the representation period for the proposed call in notice. The notice must state the reasons for the call in, including the State interest giving rise to the call in.
106J Assessing and deciding application The chief executive must assess and decide, or reassess and re-decide, the application or a part of the application. However, if the declaration notice for the application directs the decision-maker to assess the application or a stated part of the application, the chief executive's decision in relation to the application may be based on the decision-maker's assessment.	**S105 Deciding called in application** The Minister may assess and decide, or reassess and re-decide, all or part of the application. Alternatively, if the call in notice is given before the decision-maker decides the application, the Minister may direct the decision-maker to assess all or part of the application and decide the application, or part of the application, based on the decision-maker's assessment.
S 106J (3) The following provisions do not apply : section 45(3) to (8); and (ii) part 3, division 1; and (iii) sections 60 and 61 to the extent the sections impose an obligation on an assessment manager; and s 62; and s 64; (b) If the application is a change application—sections 81, 81A and 82. (4)	**S105 The following provisions do not apply to the application**— (a) for a development application—sections 45(3) to (8), 60 to 62, to the extent those sections impose obligations on the assessment manager, and section 64; (b) for change representations—section 76(1); (c) for a change application for a minor change—sections 81 and 81A; (d) for a change application for a change that is not a minor change—section 82; (e) for an extension application—section 87(1) to (4). (5)

S 106J In assessing and deciding the application, the chief executive may consider— (a) any State interests relating to the development the subject of the application; and (b) any planning instruments applying to the premises the subject of the application; and (c) any information or advice given to the chief executive in relation to the application including information or advice in a submission or representation; and (d) any other matter the chief executive considers relevant. The chief executive need not consider any referral agency's response given before the declaration notice for the application is given but may ask a referral agency for the application for advice about the application.	**S 105** For an application that is not a cancellation application, the Minister may consider anything the Minister considers relevant. The Minister need not consider any referral agency's response.
106L Notice of decision If the chief executive decides any part of the application, the decision notice for the decision must be given to each person who was required to be given the declaration notice for the application under section 106E(a). The decision notice must state the matters the chief executive considered in making the decision.	**S 105(7)** The period under this chapter or the development assessment rules between the day the last procedural event for the application ends, and the day before the application must be decided, is replaced by— (a) 30 business days; or (b) if, before the 30 business days end, the Minister gives a notice extending the period to the entities in section 103(1)—50 business days. The Minister must give the decision notice to each person who was required to be given the call in notice. The Minister's decision notice must state the matters the Minister considered in making the decision.
106M Publication of notice about decision The chief executive must publish a notice about the chief executive's decision under section 106J on the department's website. The notice must describe the development; state reasons for the decision; and any other matter prescribed by regulation.	
106N Reports about declarations and applications (1) If the chief executive decides an application, or part of an application, under section 106J, the chief executive must prepare a report that explains the nature of the decision and the matters the chief executive considered in making the decision; and includes a copy of the decision notice for the decision. As soon as practicable after the end of each financial year, but no later than 31 October, the Minister must table in the Legislative Assembly a report that states the number of declarations made under section 106D during the financial year; and, for each decision made, a copy of the report prepared for the decision.	**106 Report about call ins** If the Minister decides a called in application, the Minister must prepare a report that explains the nature of the decision and the matters the Minister considered in making the decision; and includes a copy of the notice of the decision. The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after giving the notice of the decision.

* Highlighted text indicates notable points of difference

Appendix 2 – SEQCA Recommendations for dealing with the SEQ Housing shortage

1. Appoint a taskforce to investigate the opportunities and barriers to bringing more rental properties onto the market from existing housing supply.

2. Incentivise existing home owners with spare capacity to consider renting out accommodation.

3. Incentivise long term leasing over short term rentals.

4. Ensure all development approvals include a time limit for completion and a sunset clause to ensure new development is brought to the market in a timely fashion.

5. Devise a proactive regionalisation strategy including the provision of more housing, jobs and amenities in regional Queensland.

6. Ensure high amenity areas are fully and comprehensively planned at the neighbourhood level in conjunction with the local community PRIOR to any re-zoning for higher density.

7. Ensure appropriate levels of infrastructure (transport, water, sewerage, educational, health and greenspace) are enhanced and supplied before or contemporaneously with any re-zoning for higher density.

8. Proposed maximum car parking space requirements should recognise regional, local and site specific variations in access to active travel and public transport options.

9. Adequate and safe footpaths to alternative modes of transport must be provided.

10. Implement measures to prevent on-street parking congestion.

11. Access for emergency vehicles to every dwelling must be guaranteed.

12. Low density development should be defined as 1-2storeys (maximum8.5metres) with potential for 3 storey development (maximum 12 metres) in pre-determined locations (identified in conjunction with local communities) where impact on neighbouring development will be minimal.

13. Medium density development should be limited to 3-5 storeys (approximately tree height) with potential for relaxations up to 6 storeys in appropriate localities (for instance, those already characterised by buildings of different heights) and where the impact on neighbouring properties is minimised by good design elements including setbacks sufficient to allow deep planting; relevant design guidelines, such as those in the Density Done Well Series, are met in their entirety and the developer makes a proportionate contribution to social or affordable housing (whether or not in kind) or meets, for example, the sustainability requirements outlined in Brisbane City's Green Buildings Incentive Policy.

14. Monitor PDAs and MDAs to ensure that agreed numbers of social and affordable housing are actually delivered in a timely fashion and that a diverse range of residential housing is supplied.

15. Maintain and increase the budget for social housing to meet 100% of the estimated need for social housing by or before 2032.

16. Introduce additional measures, including but not limited to inclusionary zoning, to ensure major new housing supply includes social or affordable housing including build to rent options.

17. All the proposed Athletes villages in Queensland should be designed to be used as social and affordable housing prior to and after the 2032 Olympics.

18. All government built social and affordable housing must remain in public hands.

19. Developers building high density residential accommodation in inner city areas should be obliged to allocate 20% (or an equivalent contribution to a housing fund) of new development to meet social and affordable housing in perpetuity. Development plans for all PDAs should include a similar requirement.

20. With respect to the Pathways shared equity scheme, the government must fully replace public housing leaving the government owned stock through this scheme on ongoing basis.

21. The Pathways shared equity scheme should be enlarged to offer a joint equity pathway (similar in design but additional to any offered by the national government) for people not renting government owned housing.

22. Social and affordable housing should be distributed across the whole City in a range of densities compatible with local zone plans.

23. People eligible for social housing should be granted free or subsidized access to public transport to help overcome access / mobility issues.

24. Suburbs with limited access to public transport should be prioritised for improved services.

25. Implement a Liveability and Sustainability Code to ensure the themes in SUSTAIN and LIVE are actually applied in all new development.

26. Ensure all new residential development provides access to publicly accessible green spaces of at least 0.5–1 hectare within 300 metres' linear distance of all new homes (as recommended by the World Health Organisation).

27. Develop and honour local neighbourhood plans to ensure development for increasing density blends sympathetically with existing development, preserves access to community facilities including green space and respects heritage features including character housing; sites and views of interest and mature native trees.

28. Ensure all relevant development regulations and codes and all elements of local planning schemes incorporate consistent and unambiguous performance outcomes that will guarantee the above objectives are met.

29. Give priority to neighbourhood plans and neighbourhood development codes over all other planning scheme codes during development assessment.

30. Specify in advance that relaxations will only be allowed in very specific circumstances and, if requested, the application becomes impact accessible immediately.

31. Ensure private certifiers are only allowed to assess and approve development applications that meet all neighbourhood code requirements.

32. Revise s 60(2) of the Planning Act to ensure higher design standards are not compromised during development assessment.

33. Ensure public space requirements are freely accessible, non-commercialised and predominantly nature-based in character.

34. Ensure shopping precincts and other commercial operations, in themselves, are not accepted as a substitute for publicly accessible greenspace.

35. Monitor and report on the loss of backyard space and existing tree cover in every suburb.

36. Adopt a minimum threshold for backyard green space (overall) in every suburb and ensure all residential development falls within that threshold or supplies additional public green space to compensate for any further loss.

37. Reconsider the decision to demolish and relocate East Brisbane State School.

38. Strengthen protections for existing mature trees in new and existing development.

39. Monitor and report publicly and regularly on the loss of existing mature tree cover in urban areas across the region.