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

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Submitted by: Ipswich City Council

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Your reference
Our reference
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31 October 2023

Dear Committee Secretary

Re: **Ipswich City Council Submission to the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023**

I refer to your email of 17 October 2023 calling for submissions on the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023. This submission on the Bill is made on behalf of the Ipswich City Council. The Council has some concerns about the proposed reserve powers for the Planning Minister, as well as the proposed Urban Investigation Zone. There are also some concerns about the operational effect of the proposed changes to the Development Control Plans. Council is generally accepting of the majority of the more administrative amendments proposed in the Bill.

Please find enclosed the comments (Attachment 1) on the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023 with further details.

If you require any further information please contact me direct on [redacted].

Yours faithfully

[redacted]

Brett Davey
GENERAL MANAGER, PLANNING AND REGULATORY SERVICES

Enc: Attachment 1 - Ipswich City Council Housing Supply Statement initial comments

	Comment	Notes
Achievement of policy objectives		
Land Acquisition: Creating a reserve power for the State in the Planning Act to take or purchase land or create easements for planning purposes, to facilitate the delivery of development infrastructure to unlock development. An amendment is made to the Acquisition of Land Act to facilitate the use of processes under the Acquisition of Land Act for the taking of land and process for calculating compensation payable. This approach is reasonable and appropriate given the need for State intervention to deliver critical development infrastructure. The review of 75 underutilised urban footprint sites in SEQ identified that a lack of development infrastructure was a critical barrier for development occurring on these sites. Government action is considered to be effective and proportional as local governments currently have the powers under section 263 of the Planning Act to take or purchase land for a planning purpose and the Bill provides the Planning Minister with equivalent powers, provides an additional tool where these powers are not utilised.	No issue with this proposal.	It appears the State has more steps to undertake, including that an IA has been entered into in relation to providing or paying for the infrastructure.
Planning Minister Determining Applications: Creating a reserve power for the Planning Minister in the Planning Act to determine a development application is a state facilitated application when it is delivering development that is a priority for the State, is for an urban purpose and meets certain criteria in the Planning Regulation, for example providing affordable housing. If determined to be a state facilitated application, it can be assessed by the State through a streamlined assessment process. An amendment is made to the P&E Court Act to provide for the development approval not to be appealed in the Planning and Environment Court, apart from by the assessment manager. An amendment is made to the ED Act to reflect who the responsible entity is for state facilitated development approvals in a Priority Development Area Development Approval converts to a planning approval. An amendment is also made to the EO Act to provide for an administering agency for state facilitated applications which include an offset condition. This approach is reasonable and appropriate because there is no streamlined assessment process for the government priority of increasing housing supply where matters such as resolving state interests, or outdated planning scheme settings are barriers to the development proceeding. Government action is considered to be effective and proportional as the streamlined process still maintains key parts of the development assessment process such as consultation but provides for certainty as the development approval cannot be appealed by a third party	There is no need to include this additional broad discretionary power. It is unclear why the Ministerial call-in process is not simply used. This power may also place undue burden on LG to undertake the assessment without receipt of the associated application fee. Where LG prescribes a fee for the assessment, this fess should be paid to LG if LG is required to undertake the necessary assessment. This power should ensure that Council or the MEDQ delegate are still able to levy charges and or requiring the provision of necessary trunk infrastructure in accordance with their respective AICR or LGIP/DCOP.	It is noted that new Section 106K places obligations on the decision-maker to: (a) give all reasonable help the chief executive requires to assess or decide the application; and (b) if the declaration notice for the application directs the decision-maker to assess the application or a stated part of the application—assess the application or part. Also agree with the DP comment – added in infrastructure component.
Urban Investigation: Facilitating a new type of zone called an Urban Investigation Zone, to assist local government to better plan for growth areas by the zone prohibiting most types of development. The use of this zone is not an adverse change under the Planning Act where a process in the Minister's Guidelines and Rules has been followed. This	The new zone is not considered to be required, rather, improved provisions could simply be applied to the existing zonings where appropriate, for example the emerging community zone.	

approach is reasonable and appropriate because consultation with local governments identified that they typically have multiple growth areas to concurrently plan for and service. This may be as a legacy from local government amalgamations or high growth pressures and result in local governments not being able to undertake planning for all of the areas and service infrastructure to them. The limitation on adverse planning change provisions is appropriate to encourage the use of this provision, noting the use of the zone is required to be reviewed every five years. Government action is considered to be effective and proportional, as local governments do not have the ability in their planning schemes to prohibit development, and the provisions can only be used after following a process in the Minister's Guidelines and Rules to ensure all other options were considered.	Additional regulation could also be applied to ensure diversity of product is protected by setting minimum density requirements consistent with the regional plan objectives for other than low density residential zones. If retained, the adverse planning change provisions should not apply where located outside the PIA and or on land not already zoned for an urban purpose. The reporting requirements are considered excessive and a significant administrative burden that would severely limit the application of this zone if retained.	
Temporary Development: Establishing 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. At the end of the stated period, the use rights afforded under the declaration will cease. At that time the use rights will revert to what was in place prior to the declaration. Alternatively, if required under the relevant planning scheme, a person may apply for a development approval for the material change of use while the declaration is in place. This approach is reasonable and appropriate as the amendment will reduce regulatory burden and the need for consultation for development that will help to address an emergent need. Government action is effective and proportional as having the power to declare temporary accepted development under the Planning Regulation ensures there is a mechanism through which the government can respond to urgent and emerging issues to achieve positive community outcomes in a timely manner.	This may be suitable where: - the timeframe is limited to 2 years, being the same as implementing a TLPI; - the power is restricted to the reuse of an existing building (or use of land where not requiring a building); - it does not result in new permanent works (particularly building works) being established. Allowing for permanent works, particularly buildings will restrict the ability of the LG and the public (if normally requiring public consultation) to appropriately consider and assess the proposed use where it would normally require approval. The State is already able to set assessment levels through regulation and due process should be followed. Alternative, the Minsterial call-in process could be utilised where involving a state interest. If retained, this power should ensure that Council or the MEDQ delegate are still able to require the provision of necessary trunk infrastructure in accordance with their respective LGIP/DCOP.	

	This power should ensure that Council or the MEDQ delegate are still able to levy charges at the end of the temporary period (should the use be continued) where the use was an increase in the intensity and scale and a charge would normally have applied.	
Direction to Amend Planning Scheme: Allowing 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, or a matter in the Planning Regulation in which it must be consistent (and therefore public consultation isn't necessary), without first giving notice to the local government. The amendment is reasonable and appropriate as exercising this power will ensure consistency between a local planning scheme and state policy and legislative requirements, thereby providing certainty about what planning controls apply to land. Government action is effective and proportional as the Minister's powers may be used in circumstances where a local government has not amended its local planning instrument in a timely way.	This may place a significant administrative burden on LG and it is unclear why notice would not be given. The LG should also be afforded opportunity to identify time pressures or seek resourcing assistance.	
Public Notice Requirements: Modernising requirements for publishing public notices by removing the requirement that they be in a hard copy newspaper; clarifying that submissions can be made electronically without requiring the submission to be signed by each person making the submission; and ensuring documents are publicly accessible during a public health emergency or disaster situation (declared emergency). Modernising public notice requirements under SCRA and IRDA ensure this improvement applies across planning legislation. The amendments are reasonable and appropriate as they modernise processes relating to making submissions and accessing documents and notices under planning legislation. Government action is effective and proportional as the changes benefit state and local governments and the community by ensuring public notification can be carried out reliably across the State, particularly in locations where a hard copy newspaper is not available, clarifying when and how an electronic submission is properly made, and ensuring documents are accessible to the public during a declared emergency.	No issues with this proposal.	
Event Declarations: Improving the functionality of applicable event declarations and temporary use licences, which are used to ensure the planning framework can respond to events or disasters, such as floods, cyclones, bushfires or a public health emergency. The amendments enable the Planning Minister to declare uses and classes of uses independently of the start or end of an applicable event, to extend or suspend relevant periods during an applicable events enabling statutory timeframes, such as those related to development assessment or plan making to be suspended, and to end the effect of temporary use licences (TULs). They also provide for consultation in relation to TUL applications and allow for TULs to be amended, extended, suspended or cancelled. Similar amendments are made to the ED Act to ensure these process improvements	No issues with this proposal.	

apply across planning legislation. The amendments are reasonable and appropriate as they provide greater flexibility to respond to an applicable event as it evolves, improve the operation of TULs, and allow the Chief Executive to respond to issues or concerns with TULs once they are approved. Government action is effective and proportional as the applicable event and TUL framework was introduced in response to the COVID-19 pandemic, and the amendments address issues that arose during with this framework during this period allowing for improved efficiency for future events.		
Public Notice of MGR Changes: Simplify public notice requirements when the Planning Minister has made or amended the Minister's Guidelines and Rules, the designation process rules (which are included under the Minister's Guidelines and Rules), and the Development Assessment Rules so that these instruments take effect from the date prescribed in the Planning Regulation. The process for making State planning instruments apply to making and amending the Minister's Guidelines and Rules, designation process rules and Development Assessment Rules, in which the Planning Minister is required to publish a notice about the decision. However, the making of and any amendments made to these instruments, take effect when they are prescribed under the Planning Regulation. This is resulting in two notification processes. The amendment is reasonable and appropriate as it removes duplicative process requirements. Government action is effective and proportional as it reduces regulatory burden.	No issues with this proposal.	
Appeal Periods: Allow a minimum period of 20 business days (extendable by mutual agreement) for an assessment manager or responsible entity to assess representations to change a development approval in circumstances where an applicant does not give notice to suspend the appeal period. This amendment is reasonable and appropriate, and government action effective and proportional as it provides sufficient time for an assessment manager or responsible entity to evaluate the representations and respond without necessarily exposing the recipient to additional delays.	No issues with this proposal.	
ICN Timing: Allow the appeal period for an infrastructure charges notice (ICN) to be suspended from the day representations were made without giving a notice to the local government if the representations are withdrawn. The balance of the appeal period restarts the day after the local government receives the notice of withdrawal. This allows sufficient time for a recipient to appeal during the appeal period if the recipient does not suspend the appeal period. This amendment is reasonable and appropriate, and government action effective and proportional. Local government does not have a specified length of time to assess the representations under the current framework and a specified timeframe is not required where representations are made during the appeal period. Also, the period for the infrastructure charges notice starts again when the local government gives the decision notice to the recipient.	No issues with this proposal.	
Owner Definition: Amend the definition of owner to clarify owner's consent	No issues with this proposal.	

requirements for development on State reserves where there is no trustee lease. The amendment is reasonable and appropriate as it removes confusion where two entities are viewed as the owner for the purposes of owner's consent. Government action is effective and proportional as it reduces administrative burden for applicants.		
Retaining Walls: Remove retaining walls as an example of building work. The amendment is reasonable and appropriate, and government action effective and proportional as it removes confusion that all retaining walls are considered to be building work	No issues with this proposal.	
Assessment Benchmarks, Heritage: Prescribe that a local categorising instrument may not include assessment benchmarks about the impact of development on the cultural heritage significance of a local heritage place that is also a Queensland heritage place (dual listed heritage place). The amendment resolves a long-standing agreed state policy position and is reasonable and appropriate, as duplication in state and local government development assessment can result in increased costs to applicants, inconsistent decision making, and potentially subsequent court action and associated costs. Government action is effective and proportional as it removes duplicate assessment while ensuring the impact of a proposed development on the cultural heritage significance of a dual listed heritage place continues to be assessed by the state.	It is noted that the draft planning scheme does not include dual listings. A few local cultural heritage listings are however included for components that are not included in the State listing. As any assessment benchmarks that relate to the local heritage place component only is therefore not a duplication and this amendment should not apply in these instances.	
Statury Instruments: Insert a validation provision for referral agencies, similar to the existing provision for assessment managers, refining arrangements around considering statutory instruments coming into effect after a development application is made but before it is determined. The amendment is reasonable and appropriate, and government action effective and proportional as it aligns with the validation provision made for assessment managers under the Economic Development and Other Legislation Act 2018.	No issues with this proposal.	
Appeals: Clarifies in the P&E Court Act that the applicant bears the onus of proof in a submitter appeal for change applications and that the appellant bears the onus of proof for an appeal related to urban encroachment registration. This approach is reasonable and appropriate and government action is effective and proportional as the change ensures the dispute resolution system can operate effectively for the affected parties, and costs by those parties is not wasted in incorrect judicial proceedings.	No issues with this proposal.	
DCP Changes: The Bill will achieve the policy objectives of validating past approvals in DCP areas and modernising the assessment framework that applies to development in DCP areas by: • validating development approvals given in DCP areas since the repeal of the IPA; • applying the development assessment process under the Planning Act to development in a DCP area; and • retaining the role of a DCP in categorising development and assessment, and setting assessment benchmarks.	<u>Past Approvals</u> No issues with the validation of past approvals in the DCP area. <u>Application Processes</u> Whilst the principle of applying the development assessment processes under the Planning Act to	

The provisions will commence by proclamation to enable supporting amendments to the Planning Regulation to be drafted. The amendments to the Planning Regulation will set out matters for applying or interpreting DCPs, and the relationship between the regulation, local government planning schemes and DCPs so that it is clear how the assessment process operates in these areas. For example, the Planning Regulation will prescribe when state referral is required, to avoid duplication with matters that have already been integrated into a DCP and subsequent plans; but ensure other state interests are considered at the development assessment stage. This approach is reasonable and appropriate as is addresses matters arising out of the P&E Court decision in relation to the Northlakes judgement which found the development assessment process under the repealed IPA applied in DCP areas, calling into question the validity of previous development approvals made since the repeal of that Act. Government action is considered to be effective and proportional as it applies the contemporary development assessment process under the Planning Act to DCP areas, while ensuring the DCPs remain in effect, continue to categorise development and set assessment benchmarks.	development in the DCP area is supported, there needs to be some clarification in relation to conflicting processes. <u>1. Combined Application</u> Sections 2.4.1 and 2.4.2 of the Springfield Structure Plan (Part 14 of the Ipswich Planning Scheme) identifies that the development application (made pursuant to the Act) can be lodged concurrently with the Area Development Plan (ADP) application. The ADP process utilises calendar days whereas the development application process under the Act utilises business days. This may lead to inconsistencies in assessment times. In practice, there may be a concurrent application that incorporates an ADP application to designate land for a Child Care Centre and a material change of use for a Child Care Centre. The material change of use component may trigger referral to SARA for assessment of State matters. It is impractical for a decision on the concurrent ADP component of the single application until the material change of use component is also in the Decision Part of the development application process. It is recommended that an additional clause be included to specify that where timeframes conflict between concurrent DCP processes and development application process, the decision part for either component of the application cannot commence until both parts of the application process has entered the relevant decision making part of the process. <u>2. Appeal Provisions</u> Consideration should be given to the incorporation of an equivalent change representation process within the dispute resolution provisions of the Springfield Structure	

	Plan (Section 11).	
Estimated cost for government implementation		
Growth area tools: The provisions related to the State facilitated application process will incur an additional cost in the training, implementation and assessment of these development applications. In addition, the taking or purchase of land for development infrastructure by the Planning Minister may incur resources. The additional support costs associated with these elements will be funded through the realignment of existing resources however, additional government funding may be sought depending on the volume of requests received through the state facilitated application process. Local governments may require additional resourcing should they wish to use the process for the Urban Investigation Zone but this is counterbalanced by the zone providing a holding pattern, allowing local governments to better allocate resources to priority areas requiring urgent planning.	Refer comments above.	
Operational amendments, DCPs and Urban encroachment: The operational amendments, amendments to the development assessment process in DCP areas and amendments to the urban encroachment provisions are not expected to incur additional costs or require additional resources.	No issues with this proposal.	