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

Submission No:	23
Submitted by:	Organisation Sunshine Coast Association of Residents (OSCAR)
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Recognising and upholding excellence in local government

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31 October 2023

Committee Secretary

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

Email: sdric@parliament.qld.gov.au

Dear Committee Secretary

Subject Organisation Sunshine Coast Association of Residents (OSCAR) response to the Queensland State Government Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023

The Organisation Sunshine Coast Association of Residents Inc. (OSCAR) appreciates the opportunity to respond to the **Queensland State Government Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023.**

OSCAR is a non-partisan and not-for-profit umbrella/peak organisation covering resident and community organisations on the Sunshine Coast and Noosa local government areas (LGAs) in South East Queensland.

OSCAR currently has 35+ active member groups from the Pumicestone Passage to Noosa and from the Coast to the hinterland and ranges.

OSCAR aims to support member organisations by:

1. Advocating to local and state government and the public on policy issues that are of regional significance and of concern to our members;
2. Acting to resolve issues of strategic or region-wide relevance that are referred by member organisations;
3. Representing the member organisations on region-wide matters of interest to the community;
4. Maintaining awareness and responsiveness through frequent and regular ordinary meetings and dialogue with member organisations; and
5. Practising professional, honest and ethical conduct.

Further information about OSCAR can be found on our website at: https://www.oscar.org.au/

Yours sincerely

[redacted]

Melva Hobson PSM,
President
OSCAR Inc. (Organisation Sunshine Coast Association of Residents)

OSCAR response to the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023

Overall comments

We make the following general comments regarding the **Planning and Other Legislation Amendment Bill 2023**. Some of the changes identified in the paper are clear and from a departmental point of view may seem to be ''housekeeping'' changes; for example the clarification of planning rules based on Court rulings.

However, overall we are concerned re what could be seen as reducing community participation and transparency. We are not satisfied that the need for a number of the changes is necessary. It would appear to community members that some of the changes are an overreach and do not demonstrate good planning, good community engagement or effective engagement with Local Government.

We appreciate that there is a ''housing crisis'' and the government response is a reaction to that. We suggest that there are a number of things that the State Government can do before overriding Local Government decisions and/or unilaterally removing the opportunity for meaningful community consultation.

A key issue however is the unintended consequences as a result of change.

OSCAR also supports the submission made by the South East Queensland Community Alliance (SEQCA), a copy of which is attached.

In our submission we also make reference to our submission made to the Consultation Paper of April 2023 on Improvements to Queensland's Planning Framework. A copy of that submission is also attached.

Specific comments

Our specific comments are based on the information included in the **Explanatory Notes** accompanying the Bill.

Achievement of policy objectives

Growth area tools

The Bill will achieve the policy objective of optimising the planning framework's response to current housing challenges by:

• 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.

OSCAR response

This would appear to OSCAR as an ''overreach'' and ''heavy-handed'' and if such measures are required by the State then the whole process that has previously been undertaken has not been an example of effective engagement and negotiation before, during or after the approval of a Development Application.
If Local Government currently have these powers one asks why there is the need for the State to duplicate such powers.

OSCAR asks the question - does the State intend to override the LGs gazetted Planning Scheme by the use of this proposed duplication of powers using the concept of affordable housing as an excuse? This is particularly relevant given there is not a definition of ''affordable housing''.

Furthermore, is the State intending to use the existing Ministerial infrastructure designation power in association with this new power? (I'm concerned about arbitrary, poorly considered and premature use of the new power that undermines lawful property rights. E.g. the CAMCOS corridor acquisitions 30 years ago and the numerous route changes of mind thereafter which presumably require new acquisitions and the creation of redundant existing easements.)

• **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.
(Planning and Other Legislation Bill 2023 Explanatory Notes Page 3)

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.
(Planning and Other Legislation Amendment Bill 2023 Explanatory Notes Page 4)

OSCAR response
This is a clear example of the State overriding a LG Planning Scheme and provisions for community consultation, engagement and public scrutiny on a development on the basis of ''affordable ''housing. We reiterate that there is no clear definition of ''affordable housing''.

Queensland planning and approval history does not have a good history related to Environmental Offsets. This proposal only endorses the continuance of such actions. The community expects better from its State Government.

This proposal also removes the right of appeal!! OSCAR questions the basis under which the state will determine the application of State facilitated application process. Will it be a request from a Local Government or a developer? Should this aspect of the Bill continue it should be a requirement that the Minister publicly release the reasons for such a determination.

What such a process will in effect do is undermine the certainty of a LG Planning Scheme, which is intended to provide certainty to both the community and developers.

Furthermore, the natural hazards and Climate Change risk assessment policy and planning and development process issues are continuing to evolve over time (e.g. via the recent Draft SEQRP Update, the periodic IPCC update reports, revisions of coastal hazard, flood and bushfire hazard mapping and plans, and revisions to biodiversity policy and plans). Establishing a streamlined assessment process for State facilitated development proposals and limitation of court appeal rights creates opportunities for poor planning and development outcomes that ignore or give inadequate consideration to major existing and evolving risk factors. E.g. developments on floodplains or coastal erosion sites; fragmentation of significant habitat; severing of major wildlife corridors.

• **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 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.

OSCAR response
Given the demands on Local Governments' Planning staff the instigation of an Urban Investigation Zone sounds a reasonable approach. The proposals support sequencing of planning for development, including cost-effective infrastructure and services provision.

Operational amendments

The Bill will achieve the policy objectives to create operational efficiencies and improvements in the planning framework by:

• **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.

(Planning and Other Legislation Amendment Bill 2023 Explanatory Notes Page 5)

OSCAR response
OSCAR is unsure about the justification for and intended application of this proposal. It would help if examples of potential approvals and possible timeframes was provided and if there is a requirement a statement of reasons for use of the power, e.g. it appears similar to the relaxation of assessment requirements for secondary dwellings, which OSCAR accepts as a reasonable response to the housing crisis.

However, the power could potentially be used for far higher impact situations e.g. making Gentle density, 3 storey buildings, build to rent, and medium and higher density MCU applications in specific areas such as "high amenity areas" Accepted development on a temporary or even an extended time basis. OSCAR is opposed to such an outcome. We consider the minimum level of development assessment for such development should be Code Assessment.

• **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.

OSCAR response
OSCAR is prepared to support this proposal, but again suggest the need for the State to give examples where and how it intends to apply the new power.
Furthermore, we suggest that consideration must be given to the fact that the current public consultation process for proposed amendments to the Planning Regulation are not adequate (especially for amendments with significant planning and development consequences for councils and communities, and where there are implications for levels of development assessment and public submission and appeal rights).

This is clearly an example of removing the opportunity of the community to respond to such a process. It also circumvents the responsibility of the local government ''doing its job''. If one was a cynic one might say that some LGs and political parties might be happy about such a move while publicly decrying the move as anti-democratic! Surely a better option would be to negotiate with relevant LG to undertake the amendment process.

The community suggests that the public in effect will be punished and excluded from democratic good practice because their LG may be recalcitrant in making the amendments

• **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.

OSCAR response

In the past "giving notice" was deemed to have occurred through the placement of notices in relevant physical state-wide and local newspapers. With the decline is hard-copy circulation and the ceasing of some newspapers all together electronic circulation has been adopted. This is totally appropriate but there is a gap at times in ensuring an informed community can be kept abreast of any notices and where they might actually appear. The responsibility must fall on the applicant/LG to demonstrate how the method of notification meets the community's need for awareness. We suggest that all notices should, regardless of use of electronic media circulation be part of any LG/QG website notification process. The State also needs to consider whether smaller Councils with limited resources need financial and IT support to be able to maintain websites to post change notifications. Consideration should also be given to accessibility for communities in rural and remote areas of the state, where internet access can range from problematic to almost non-existent.

• **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 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.

OSCAR response

These proposals appear to be tidying up technical issues in the interests of timeliness and efficiency. OSCAR supports these 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.
(Planning and Other Legislation Amendment Bill 2023 Explanatory Notes Page 6)

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.

OSCAR supports this proposal

• **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.

OSCAR response
Given the demands on LGs in relation to Development applications and approvals, the issues of staffing in some local governments, OSCAR recommends that a minimum of 30 business should be allowed.

• **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.

OSCAR response - *OSCAR supports this proposal.*

• **Amend the definition of owner to** clarify owner's consent 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.

OSCAR response - *OSCAR supports this proposal*

• **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.

• **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.
(Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023 Page 7)

OSCAR response – *OSCAR supports the above two proposals*

• **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.

• **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.

OSCAR Response – OSCAR supports the above two proposals.

Urban Encroachment registration – proposed planning legislation amendments

OSCAR makes the following general comments on the proposed amendments. These are the same comments that we made in our submission to the Consultation Paper of April 2023.

We note that Proposal 4 of the April Consultation Paper - Add a minimum period for public consultation for urban encroachment applications (new or changed) has not been included in the proposed amendment Bill. We confirm our response that we made to that April proposal i

OSCAR welcomes the proposal to introduce a requirement for a minimum public consultation period for new or changed urban encroachment registrations.

However, OSCAR opposes the proposed 15 business day minimum.

Given the significance of such a registration for the affected area, particularly the limitation of legal action entitlements following a registration and the length of time a registration is in force, *OSCAR recommends that the minimum period for public consultation should always be equivalent to the minimum period applying to Impact assessable applications.* Consistency of timeframes for comparable impact assessment process will then be achieved.

General comments on the proposals

Urban encroachment registration is currently limited to a single situation – the historic Milton brewery.

However, the fact that the State is proposing extensive legislative amendments suggests that the State anticipates the need to be able to deal with an increase in the incidence of land use conflicts between nuisance and medium and high impact activities and nearby sensitive land uses arising from urban encroachment approvals and also from approvals given to existing registered premises to increase their impact on sensitive nearby uses.

Rapid population, industrial and economic growth pressures are undoubtedly driving land use changes and increased potential land use conflicts, and not just in urban designated areas.

Land use conflicts are also increasing between urban encroachment and existing industries operating in rural designated locations e.g. encroachment on established industries including quarries, sand and gravel extraction, agriculture, horticulture , intensive livestock , abattoirs, tanneries, food processing etc. in rural locations. Separation distances, buffers, operating time limits etc. often apply, but these might not be adequate to deal with all aspects of encroachment land use conflict.

OSCAR requests the State to clarify whether the proposed amendments are intended to apply to urban encroachment on state and regional significance business and industries in rural locations.

The proposed amendments are primarily aimed at facilitating and making it more attractive for nuisance and impact creating industries to register for new urban encroachment legal protections, and to renew and amend existing registrations. This is one strategy for addressing the increased incidence of land use conflicts.

However, OSCAR notes that it is always preferable for State and Council planning and development decision-makers to avoid and minimise the creation of land use conflicts as much as possible in the first place rather than rely on measures such as these registrations to try to mitigate the consequences of conflicts.

OSCAR therefore requests the State to consider what measures can be incorporated in planning legislation to require more rigorous assessment of assertions of over-riding planning need for proposed development that creates land use conflict. Far too often over-riding planning need is asserted and accepted without appropriate scrutiny. OSCAR suggests that the onus of proof of genuine over-riding planning need must rest with the planning or development proponent, and that must include analysis of alternative proposals and a demonstration that there is no feasible alternative to the proposed development.

Finally, OSCAR recommends that in deciding to proceed with these proposed changes the State needs to give major consideration to the serious deficiencies in the public consultation processes existing in the current planning and environmental legislation and serious deficiencies in public complaints handling processes by councils and state agencies. These deficiencies have the following implications for each of the first 3 of the proposed amendments:

(a) how well members of the public can become aware of proposed new, renewed and amended urban encroachment registrations

(b) the level and effectiveness of public influence in the decision-making by the Minister, and

(c) whether the State is fully aware of the number and significance of public complaints about the business or industry concerned that are relevant to a decision on a registration proposal.

The Bill will amend the Planning Act to ensure the policy objectives of improving the urban encroachment provisions are achieved by:

• Create a new change registration application process where an existing affected area is modified or expanded, in which consultation occurs only with persons in the expanded area.

OSCAR response

OSCAR supports the proposal provided (i) the public consultation process and public court appeal rights are always equivalent to Impact assessment in the Planning Act and (ii) the Minister releases a report stating the reasons for his decision, including how public submissions have been taken into account.

OSCAR also recommends that the State reconsider the proposal that only newly affected parties will be consulted. Parties that are within the currently affected area might not always be aware of the existing registration and could have legitimate concerns about how the change will affect them. If they are aware they might have useful experience of the effectiveness of the mitigation measures in place. They might also be affected by the knock-on consequences of the proposed amendment to the registered affected area (e.g. changes in traffic movements or noise or possibly encouragement of additional land use changes that create new impacts).

• A simplified renewal process which does not require public consultation when there is an impending lapse in registration and there is no change to the affected area.

OSCAR response - *OSCAR is not opposed to a simpler process for renewal of an existing registration where no changes are proposed. This is on the basis that documentation will still be required about complaints received and compliance with development and environmental approvals. The issue is how robust those requirements are made.*

We made the following comments and recommendations in our response to the April 2023 Consultation Paper. In the interests of transparency and community engagement we would like to see these recommendations given further consideration.

We reiterate points above about the deficiencies in the development assessment system in planning and environmental legislation and deficiencies in complaints management by Councils and State agencies.

Limiting complaints to only those made in writing to the applicant within the year before the application is made is clearly insufficient.

OSCAR recommends that complaints to be taken into account by the Minister should include complaints made within 5 years of the application to the applicant, to the relevant Council, and to any relevant State regulatory agency.

Processes for testing compliance with development and environmental permits vary greatly. The applicant can be responsible for self-reporting non-compliance or third parties can trigger non-compliance investigations via formal complaints. Non-compliance can also be identified by periodic or one-off audits by State agencies. E.g. Periodic audits by DES of Environmental Authorities typically occur at 5 year intervals. OSCAR recommends that the application should include documentation demonstrating compliance within the previous 5 years. If DES has not audited a premises within that 5 years, an audit should be required.

OSCAR supports the proposal that the applicant notifies the affected area of the Minister's decision to renew the registration. We recommend that the notification include a detailed statement of reasons why the Minister has made the decision, and that the public notification duration and process be equivalent to an Impact assessable application.

OSCAR also supports the proposal that court appeal rights will apply to those in the affected area and the registered premises themselves. For this to occur, the amendments must provide legal standing rights to the parties concerned to appeal the decision and to allow access to all documentation used in arriving at the Minister's decision.

• Remove the requirement to re-register where a premises obtains a new or amended approved environmental authority and/or development approval (which has undergone the necessary approvals process under planning and environment legislation), where the affected area is not expanded, and where

the owner gives notice to the affected area and the Planning Minister. Previously, persons in the affected area were provided an opportunity to make a submission about a re-registration.

This approach is reasonable and appropriate as the process for new registrations is unchanged, and the changes do not affect processes that assess new impacts under the planning framework or Environmental Protection Act 1994. Government action is considered to be effective and proportional as the changes reduce regulatory burden and increase business certainty once an initial registration application has been assessed and granted.

OSCAR response – *OSCAR reiterates its response to the April 2023 Consultation Paper*
OSCAR opposes this proposal in its current form. This proposal needs to be recast as a registration amendment process.

It is unjustifiable not to provide public consultation for such changes in approvals.

We reiterate deficiencies in the current planning and development regime and deficiencies in complaints handling by Councils and State agencies.

Obtaining a new environmental authority or development approval implies a MCU application of some kind has been processed. If this has been a Code application or an E A application or an application in a PDA there will have been little or no opportunity for the affected area to become aware of the application and no effective way to influence the decision via formal submission or P and E Court appeal.

This proposal might be acceptable if the changes in operations and impacts proposed are only minor. In this instance, OSCAR recommends a legislative amendment to require the administrative authority to go through such a decision-making process to determine that it is a minor change and also that it will not impact the affected area in a significant way.

However, in most instances the changed operations and impacts will not be minor, and OSCAR recommends that such an application should always be publicly notified and processed as an Impact assessable application.

A hypothetical example - should a regional airport apply for such an approval/registration, where the airport is in the process of seeking a PDA declaration and is considering expanding its non-aviation related industry to include high impact industry and is located adjacent to an existing residential area be permitted to make application for registration without community consultation of at least 30 days?

In order to avoid duplication of process, OSCAR recommends that the registration amendment process should run in parallel with the Impact application for a new development permit or EA, with the submission period equivalent to an Impact application and with the same appeal rights.

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5 May 2023

To: The Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympics Infrastructure,

haveyoursay.dsdilgp.qld.gov.au/improvements-to-queenslands-planning-framework

Email: BestPlanning@dsdilgp.qld.gov.au

Dear Minister

Subject Organisation Sunshine Coast Association of Residents (OSCAR) response to the Queensland State Government *Improving Queensland's planning framework – proposed amendments – Consultation paper – April 2023.*

The Organisation Sunshine Coast Association of Residents Inc. (OSCAR) appreciates the opportunity to respond to the Consultation paper **Queensland State Government *Improving Queensland's planning framework – proposed amendments – Consultation paper – April 2023.***

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OSCAR currently has 35+ active member groups from the Pumicestone Passage to Noosa and from the Coast to the hinterland and ranges.

OSCAR aims to support member organisations by:

1. Advocating to local and state government and the public on policy issues that are of regional significance and of concern to our members;
2. Acting to resolve issues of strategic or region-wide relevance that are referred by member organisations;
3. Representing the member organisations on region-wide matters of interest to the community;
4. Maintaining awareness and responsiveness through frequent and regular ordinary meetings and dialogue with member organisations; and
5. Practising professional, honest and ethical conduct.

Further information about OSCAR can be found on our website at: https://www.oscar.org.au/

Yours sincerely

[redacted]

Melva Hobson PSM,
President
OSCAR Inc. (Organisation Sunshine Coast Association of Residents)

Response to the Department of State Development, Infrastructure, Local Government and Planning Consultation Paper April 2023

Overall comments

We make the following general comments regarding the whole discussion paper. Some of the changes identified in the paper are clear and from a departmental point of view may seem to be ''housekeeping'' changes; for example the clarification of planning rules based on Court rulings. We also welcome the inclusion and clarification of community consultation in some instances.

However, overall we are concerned re the lack of detail in the discussion paper and what could be seen as reducing community participation and transparency. We are not satisfied that the need for a number of the changes is necessary. It would appear to community members that some of the changes are an overreach and do not demonstrate good planning, good community engagement or effective engagement with Local Government.

We appreciate that there is a ''housing crisis'' and the government response is a reaction to that. We suggest that there are a number of things that the State Government can do before overriding Local Government decisions and/or unilaterally removing the opportunity for meaningful community consultation re greenfield development.

A key issue however is the unintended consequences as a result of change.

Specific issues and comments relating to the Section 1 proposals 1-18

Section 1 - the suite of proposed changes contains 18 proposals across the following six topics:

» Planning Minister's powers and processes

» change representations and minor change definition

» making submissions and accessing documents and notices

» applicable event provisions

» technical clarifications and corrections, and

» Planning and Environment Court Act 2016 (PECA) amendment

Proposals 1, 2 and 3. The broadening of direction powers of the Minister to direct local governments without the need for public notification and/or consultation could be seen as reducing transparency. Any change in this area (ie changes to MRG and DA rules etc) should be able to demonstrate that comprehensive community consultation has occurred and then for the respective minister to capture the reasons for such a ministerial direction. The example provided that a ministerial direction is given to a LG to align it with State Government policy *''without public consultation'' (Proposal 1)* could imply that no further consultation of the proposed change is needed and assumes that appropriate community consultation has already taken place at the QG policy development and adoption stage or that there is no intention of there being community consultation. Any ministerial direction **must** therefore need to demonstrate community consultation has occurred and the minister has taken such consultation into consideration.

Proposal 4 assessment timeframes. Nominating a period of 20 working days seems reasonable on the face of it, but we are not assessment managers and we are not aware if 20 or 30 days is more appropriate for managers to assess change representations. However, given the staffing issues that some LG s have OSCAR suggests that 30 business days should be allowed. We ask what consultation

has occurred with Local Government and what was their suggestion? We have heard anecdotally that there has not been any consultation with LG

Proposal 5 SDPWOA call in and approval. This seems to allow the minister administering the SDPWOA and the minister approving the change to be one of the same entity. This provision it would appear to us creates potential conflict of interest issues

Proposal 6 Change to giving notice. In the past "giving notice" was deemed to have occurred through the placement of notices in relevant physical state-wide and local newspapers. With the decline is hard-copy circulation and the ceasing of some newspapers all together electronic circulation has been adopted. This is totally appropriate but there is a gap at times in ensuring an informed community can be kept abreast of any notices and where they might actually appear. The responsibility must fall on the applicant/LG to demonstrate how the method of notification meets the community's need for awareness. We suggest that all notices should, regardless of use of electronic media circulation be part of any LG/QG website notification process. The State also needs to consider whether smaller Councils with limited resources need financial and IT support to be able to maintain websites to post change notifications. Consideration should also be given to accessibility for communities in rural and remote areas of the state, where internet access can range from problematic to almost non-existent.

Proposals 7 and 8. Access to documents and electronic submissions. This ensures the public has access to documents physical and electronic and a submitter can lodge electronically. *Supported* However, the State needs to consider whether smaller Councils with limited resources need financial and IT support to be able to maintain websites to post change notifications. Furthermore an OSCAR member group has complained about difficulty uploading and downloading large files from/to SCRC website, so it might even be an issue for other large, well-resourced Councils as well.

Proposals 9, 10 and 11. Applicable Events and TULs. These seem to just tidy up housekeeping around event approvals and issuing and cancelling TULs. *Supported*

Proposals 12 to 17 technical clarifications and corrections. These seem to just be a tidy up of technical issues. However, **Proposal 13** recommends 10 business days for a LG consideration of representations. Relating to ICN charges notification. OSCAR recommends that this should be 20 business days as in some areas there are staff shortages. **Proposal 15** does reinforce the power of a Planning Regulation under the Act to have supremacy over a local instrument. We assume this was the case anyway but it may not be.

Proposal 18 Burden of proof. The development applicant should bear the onus of proof

Specific issues and comments relating to Section 2 Development Control Plans Amendments

At this stage OSCAR has no in principle issue with the State intention to amend the Planning Act to validate existing approvals given under a DCP, the need for which appears to have arisen as a result of a P & E Court decision.

However, we have serious concerns about why and how the State is intending to apply the development assessment and the State interest provisions of the Planning Act and the Regulation to the Kawana DCP.

We are also concerned that there has been no prior public announcements about these intentions, including details of any discussions with Sunshine Coast Regional Council (SCRC) and the Kawana developer (Stocklands) and the outcome of those discussions. The ramifications of the State's intentions for Council, the developer and the Sunshine Coast community are unclear, despite these potentially being quite significant.

OSCAR requests the State release more detail of these proposed amendments, including some explanatory information about how these would apply to the Kawana DCP, and to undertake a separate, transparent public consultation process that enables Council's views and those of the developer and the community to be given due consideration.

In the short time available for submissions on this proposal, OSCAR has done only a preliminary review of the Kawana DCP.

The Kawana DCP is a highly specific, structured Master Plan blueprint for detailed planning and development covering Birtinya and parts of Parrearra and Bokarina. It includes key parts of the Sunshine Coast regional settlement pattern (Birtinya Town Centre and the SC public and private hospitals health hub) and the regional transport infrastructure system.

The DCP appears to operate as a separate and independent element of the current Sunshine Coast planning scheme and includes a number of specific infrastructure agreements. It is mentioned in the Kawana Waters Local Area Plan, but is not regulated by it. Similarly, it does not seem to be subject to the Tables of Development Assessment, Overlays, Zones and Codes, and as such it is unclear how Impact and Code assessment and the associated public submission rights operate.

It is part of a three party legal agreement between the State, the former Caloundra City Council and the developer (currently Stocklands). The agreement of the State minister is required for some matters affecting the Kawana lease, and, where there is inconsistency between the DCP provisions and the former Caloundra planning scheme, the DCP prevails. (Presumably the DCP also prevails over the current SC Council scheme, which incorporated the Caloundra scheme after the regional Council amalgamation occurred). Presumably any Planning Act amendment which affects the processes and intended outcomes of the Kawana DCP can only proceed with the agreement of the three parties to the DCP agreement.

The DCP uses terminology, definitions, application types and assessment benchmarks that are different to those in the current Planning Act and Regulation. E.g. The development assessment benchmarks are often very detailed and prescriptive, and in some cases explicitly prohibit certain uses and outcomes i.e. markedly different from the current Act – Performance/ Code based system. It is therefore difficult to see how the provisions of the DCP can be reconciled with those of the Act and Regulation. A complete rewrite of the DCP will likely be required, which again raises the issue of renegotiating the DCP agreement with the three parties involved.

It also raises the question of the public consultation on changes to the current DCP, the planning scheme and the timing of these proposed amendments. In the event that the State insists on aligning the Kawana DCP with the Planning Act processes and integrating it with the Sunshine Coast scheme, it should ideally be undertaken as part of the current process for preparing the Councils new scheme and in the context of transport infrastructure planning that is underway.

On the latter point OSCAR notes that the DCP area features a number of as yet unresolved major rail, road and public transport infrastructure proposals that have significant implications for planning and development within the DCP area itself and in other sections of the Kawana Waters Local Area Plan (i.e. the CAMCOS route and 3 designated stations covered by the DCP, the Kawana Way upgrades, the proposed Mass Transit project and bus system upgrade, and possibly also the Mooloolah River / Mooloolaba Interchange upgrade).

These unresolved transport infrastructure proposals have major implications for the extent and location of increased urban densities in the coastal economic corridor and potentially will involve areas of new development and redevelopment within the Kawana DCP area.

Specific Issues and comments on Section 3 – Urban Encroachment

Urban encroachment registration – proposed planning legislation amendments

General comments on the proposals

Urban encroachment registration is currently limited to a single situation – the historic Milton brewery.

However, the fact that the State is proposing extensive legislative amendments suggests that the State anticipates the need to be able to deal with an increase in the incidence of land use conflicts between nuisance and medium and high impact activities and nearby sensitive land uses arising from urban encroachment approvals and also from approvals given to existing registered premises to increase their impact on sensitive nearby uses.

Rapid population, industrial and economic growth pressures are undoubtedly driving land use changes and increased potential land use conflicts, and not just in urban designated areas.

Land use conflicts are also increasing between urban encroachment and existing industries operating in rural designated locations e.g. encroachment on established industries including quarries, sand and gravel extraction, agriculture, horticulture , intensive livestock , abattoirs, tanneries, food processing etc. in rural locations. Separation distances, buffers, operating time limits etc. often apply, but these might not be adequate to deal with all aspects of encroachment land use conflict.

OSCAR requests the State to clarify whether the proposed amendments are intended to apply to urban encroachment on state and regional significance business and industries in rural locations.

The proposed amendments are primarily aimed at facilitating and making it more attractive for nuisance and impact creating industries to register for new urban encroachment legal protections, and to renew and amend existing registrations. This is one strategy for addressing the increased incidence of land use conflicts.

However, OSCAR notes that it is always preferable for State and Council planning and development decision-makers to avoid and minimise the creation of land use conflicts as much as possible in the first place rather than rely on measures such as these registrations to try to mitigate the consequences of conflicts.

OSCAR therefore requests the State to consider what measures can be incorporated in planning legislation to require more rigorous assessment of assertions of over-riding planning need for proposed development that creates land use conflict. Far too often over-riding planning need is asserted and accepted without appropriate scrutiny. OSCAR suggests that the onus of proof of genuine over-riding planning need must rest with the planning or development proponent, and that must include analysis of alternative proposals and a demonstration that there is no feasible alternative to the proposed development.

Finally, OSCAR recommends that in deciding to proceed with these proposed changes the State needs to give major consideration to the serious deficiencies in the public consultation processes existing in the current planning and environmental legislation and serious deficiencies in public complaints handling processes by councils and state agencies. These deficiencies have the following implications for each of the first 3 of the proposed amendments:

(a) how well members of the public can become aware of proposed new, renewed and amended urban encroachment registrations

(b) the level and effectiveness of public influence in the decision-making by the Minister, and

(c) whether the State is fully aware of the number and significance of public complaints about the business or industry concerned that are relevant to a decision on a registration proposal.

OSCAR recommends the State consider the implications of the following deficiencies in current planning and environmental legislation:

(i)The Planning Act and its administration by the Department of State Development has significantly reduced use of Impact assessment in Council planning schemes to assess development applications. This has significantly diminished the capacity of the public to know about development proposals via formal public notification requirements and to have any effective influence on decisions made via formal public submission and court appeal rights. The now dominant use of Code assessment denies the public legitimate submission rights and access to the court in most circumstances. It excludes the public from the decision making process, and this is exacerbated by the fact that it is now almost impossible to refuse approval of a Code application.

(ii)There is also no provision for the public to influence the exercise of state interests by SARA.

(iii)The increasing use of PDA declarations etc. under the Economic Development Act also severely restricts public consultation opportunities on planning and development proposals and even Council influence in decisions taken by the State on these proposals.

(iv)The vast majority of Environmental Authorities processed by DES under the E.P. Act involve no public consultation process whatsoever.

(v)While some development permit and environmental authority processes provide for public nuisance complaints to be investigated and addressed by Councils and/or State agencies, in OSCAR's experience there are major deficiencies in whether and how well public complaints are recorded and responded to in practice. Lack of records of public complaints and investigations made by the relevant authority means that these considerations cannot be given sufficient weight in a decision about a proposed registration.

Proposal 1 – Create a new change to registration application process allowing for the assessment and approval of a change to the 'affected area' within an existing urban encroachment registration

OSCAR supports the proposal provided (i) the public consultation process and public court appeal rights are always equivalent to Impact assessment in the Planning Act and (ii) the Minister releases a report stating the reasons for his decision, including how public submissions have been taken into account.

OSCAR also recommends that the State reconsider the proposal that only newly affected parties will be consulted. Parties that are within the currently affected area might not always be aware of the existing registration and could have legitimate concerns about how the change will affect them. If they are aware they might have useful experience of the effectiveness of the mitigation measures in place. They might also be affected by the knock-on consequences of the proposed amendment to the registered affected area (e.g. changes in traffic movements or noise or possibly encouragement of additional land use changes that create new impacts).

Proposal 2 – Simplify the renewal of an existing registration

OSCAR is not opposed to a simpler process for renewal of an existing registration where no changes are proposed. This is on the basis that documentation will still be required about complaints received and compliance with development and environmental approvals. The issue is how robust those requirements are made.

We reiterate points above about the deficiencies in the development assessment system in planning and environmental legislation and deficiencies in complaints management by Councils and State agencies.

Limiting complaints to only those made in writing to the applicant within the year before the application is made is clearly insufficient.

OSCAR recommends that complaints to be taken into account by the Minister should include complaints made within 5 years of the application to the applicant, to the relevant Council, and to any relevant State regulatory agency.

Processes for testing compliance with development and environmental permits vary greatly. The applicant can be responsible for self-reporting non-compliance or third parties can trigger non-compliance investigations via formal complaints. Non-compliance can also be identified by periodic or one-off audits by State agencies. E.g. Periodic audits by DES of Environmental Authorities typically occur at 5 year intervals. *OSCAR recommends that the application should include documentation demonstrating compliance within the previous 5 years. If DES has not audited a premises within that 5 years, an audit should be required.*

OSCAR supports the proposal that the applicant notifies the affected area of the Minister's decision to renew the registration. We recommend that the notification include a detailed statement of reasons why the Minister has made the decision, and that the public notification duration and process be equivalent to an Impact assessable application.

OSCAR also supports the proposal that court appeal rights will apply to those in the affected area and the registered premises themselves. For this to occur, the amendments must provide legal standing rights to the parties concerned to appeal the decision and to allow access to all documentation used in arriving at the Minister's decision.

Proposal 3 - Remove the requirement to re-register where a premises obtains a new approved environmental authority and/or development approval

OSCAR opposes this proposal in its current form. This proposal needs to be recast as a registration amendment process.

It is unjustifiable not to provide public consultation for such changes in approvals.

We reiterate deficiencies in the current planning and development regime and deficiencies in complaints handling by Councils and State agencies.

Obtaining a new environmental authority or development approval implies a MCU application of some kind has been processed. If this has been a Code application or an E A application or an application in a PDA there will have been little or no opportunity for the affected area to become aware of the application and no effective way to influence the decision via formal submission or P and E Court appeal.

This proposal might be acceptable if the changes in operations and impacts proposed are only minor. In this instance, *OSCAR recommends a legislative amendment to require the administrative authority to go through such a decision-making process to determine that it is a minor change and also that it will not impact the affected area in a significant way.*

However, in most instances the changed operations and impacts will not be minor, and *OSCAR recommends that such an application should always be publicly notified and processed as an Impact assessable application.*

A hypothetical example - should a regional airport apply for such an approval/registration, where the airport is in the process of seeking a PDA declaration and is considering expanding its non-aviation related industry to include high impact industry and is located adjacent to an existing residential area be permitted to make application for registration without community consultation of at least 30 days?

In order to avoid duplication of process, *OSCAR recommends that the registration amendment process should run in parallel with the Impact application for a new development permit or EA, with the submission period equivalent to an Impact application and with the same appeal rights.*

Proposal 4 - Add a minimum period for public consultation for urban encroachment applications (new or changed)

OSCAR welcomes the proposal to introduce a requirement for a minimum public consultation period for new or changed urban encroachment registrations.

However, OSCAR opposes the proposed 15 business day minimum.

Given the significance of such a registration for the affected area, particularly the limitation of legal action entitlements following a registration and the length of time a registration is in force, *OSCAR recommends that the minimum period for public consultation should always be equivalent to the minimum period applying to Impact assessable applications.* Consistency of timeframes for comparable impact assessment process will then be achieved.