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

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ISAAC REGION
HELPING TO ENERGISE THE WORLD

Our Ref.: *PECS:DW/MSC;Housing Availability and Affordability Bill 2023*

SENT BY EMAIL TO: SDRIC@parliament.qld.gov.au

9 November 2023

Committee Secretary
State Development and Regional Industries Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sir/Madam

RE HOUSING AVAILABILITY AND AFFORDABILITY (PLANNING AND OTHER LEGISLATION AMENDMENT) BILL 2023

Thank you for the opportunity to provide a submission on the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023. Council recognises the state-wide issue of affordable housing and commends the Queensland Government for being proactive in their search for interventions to address this challenge.

Nevertheless, Council holds significant concerns regarding the process in which these amendments are being prepared and consulted and wishes to advise that it is highly opposed to several of the amendments proposed by the Bill. The process in which these legislative changes are being consulted, given the scale of the changes and impacts on local planning processes is highly unacceptable.

A thirteen (13) day consultation period is not sufficient for local governments to effectively consider the impacts of the wide-ranging changes proposed. As mentioned further in our submission, there is significant potential for removal of local decision making as a result of the proposed legislative changes, and an absence of detail on how the mechanisms of the legislation will work – deferring these to future regulation changes and consultation next year.

Council has lived experiences which demonstrate that removal of decision making in land use planning from local governments leads to poor planning outcomes. With the introduction of the Moranbah Urban Development Area in 2011, Council saw drastic changes in the standards of land use decision making and built form outcomes in the Moranbah community. It is noted that the Moranbah UDA was implemented with the best of intent to provide an increase in housing supply for the community, but what transpired was an absence of local context from

conversations on appropriateness of development, an absence of understanding of legacy impacts generated by particular land use types and significant disconnect between assessment managers and their understanding of how planning decisions played out on the ground.

Our communities have now inherited the outcomes of these decisions, including ongoing compliance issues, and a range of data and information gaps for development which was approved by the state.

Council advocates that the needs of our residents and communities are best served when land use planning is managed by local government and objects to several of the amendments which empower the State Government to bypass and govern a local government's Planning Scheme and creates further legislative loopholes for proponents to ignore the views and needs of community, as already articulated through well-prepared and consulted local planning schemes.

Council is committed to development of local and regional solutions to housing availability and affordability challenges, as evidenced through the work of Council's Land Development Advisory Committee, local planning scheme initiatives already in place and work with Mackay and Whitsunday Regional Council's on enabling mechanisms for housing delivery.

It is recommended that many of the outcomes which the Bill seeks to achieve could be progressed through reform to Queensland's Planning Scheme amendment process to enable a more streamlined and affordable process for local government to achieve policy changes and responses to contemporary planning issues and the needs of our communities.

Contained in the attached is a detailed response to various provisions of the proposed bill for your consideration. This coupled with comments contained within our letter form the extent of our submission. We urge you to strongly consider the contents of this submission and undertake further detailed analysis and consultation on the Bill's provisions before implementation to ensure local community voices are well heard in forward decision making for their communities.

Yours faithfully

[redacted]

CR ANNE BAKER
Mayor

[redacted]

KEN GOULDTHORP
Chief Executive Officer

Enc.

CC:
The Hon. Steven Miles MP, Deputy Premier
Mr Mike Kaiser, Director General, Department of State Development, Manufacturing, Infrastructure and Planning.

Attachment 1
Isaac Regional Council – detailed considerations on provisions of the Housing Availability and Affordability Bill

Temporary Accepted Development

It is understood the Temporary Accepted Development amendments proposed by the Bill will enable a material change of use of a premises be declared temporary accepted development under the Planning Regulation for a stated period. At the end of the stated period the use rights afforded under the declaration will cease at which time the use rights will revert to what was in place prior to the declaration. It is noted that a person may apply for a development approval for the material change of use while the declaration is in place if required under the relevant planning scheme.

Council Feedback

The proposed Temporary Accepted Development provisions have potential to remove the ability for Council to regulate land uses in accordance with the needs and expectations of our communities.

A local government's Planning Scheme undergoes significant public consultation during its development to ensure transparent decision making and alignment with community expectations. The Temporary Accepted Development provisions would remove the ability for the impacts of a development to be considered through the application process and removes the rights of the community, who may have previously held submitter rights.

It is unclear what purpose the provisions are designed to serve as the Bill provides no information regarding the intended purpose and/or intent of when the declaration may be used. It is noted that Schedule 6, Section 4 of the *Planning Regulation 2017* already exempts emergency accommodation from being assessable under a local planning instrument so to point it would serve no purpose. To this regard, Council is unable to fully consider the matter without further information regarding the intended application of the provisions, assessment considerations by the Minister, timeframes/thresholds and consultation requirements with both community and local government.

Council also foreshadows that the temporary accepted development provisions have potential to generate compliance issues which could be anticipated at the conclusion of a stated period in which the temporary uses would be required to cease operations (or gain approval prior). As it currently stands these compliance responsibilities would fall to Council to enforce which is consider an unreasonable burden on Council's resourcing. Council would be challenged to manage such compliance issues due to staffing resources and would accordingly request that the State Government manage the temporary accepted development approval process through a system in which developments are required to seek joint consent of the State Government and Local Government prior to their commencement under the temporary provisions.

This measure would provide greater transparency and enable the State and Local Government to communicate directly with these proponents at the time of removal of the accepted development timeframes and undertake review and any necessary compliance action to ensure that the use ceases to operate as intended by the Bill.

State Facilitated Applications

It is understood the State Facilitated Application amendments proposed by the Bill will provide an alternative assessment pathway for material change of use, reconfiguring a lot and/or change applications. The amendments allow the Minister to declare that a development application is a State facilitated application which in essence allows for the Minister to assess or re-assess all or parts of a development application. It is noted that when a declaration takes effect, any decision or decision by the decision maker stops having effect, any appeal against the decision maker is discontinued and the process for assessing the application restarts.

Council Feedback

Council raises significant concern with the proposed State Facilitated Application process which is viewed as having the ability to unjustly diminish the rights of both local government and its communities in the development assessment process. Any removal of local decision making in the development assessment process undermines our communities ability to have a say in development outcomes that affect them.

It is noted that there is a lack of information provided in the Act about the intended use of State facilitated applications and that that broadness of the provisions in the Bill would allow almost any type of development to be eligible for this assessment pathway if considered a state priority. Of note, Section 106D(3) of the Bill empowers the minister to *'have regard to any matter the Minister considers relevant'* in considering the declaration of a State facilitated application. This appears to contradict the purpose of the Bill which is '*to optimise the planning framework's response to the current housing challenges through a suite of tools for use in any growth area across Queensland'.*

The State facilitated application amendment creates a risk of being a tool used by applicant's who may be frustrated with the assessment pathways and/or decisions made by local government at the detriment of sound planning principles and strategic planning outcomes. The State facilitated application amendments pose a risk to achieving good strategic planning outcomes and may leave our communities feeling disillusioned about the transparency and equality of the planning system. In particular, the removal of submitter appeal rights from this process is considered unjust and the ability for the Minister to declare applications that have already been decided and/or commenced appeal proceedings does not appear to align with the transparency and accountability outcomes sought by the purpose of the *Planning Act.*

Council also poses the matter of the State Government's ability to effectively assess declared development applications. Notably Council questions whether the State Government possess appropriate resources, qualified personnel and/or appropriate budget for undertaking technical assessment in which in-house resources are not available. It is

noted that Section 106K of the Bill obligates the decision-maker, most likely Council, to '*give all reasonable help the chief executive requires to assess or decide the application'.* To this point, it is expected that there would remain significant resourcing requirements from Council to provide information to the chief executive and a question of how Council is able to achieve cost-recovery for these services provided, noting that many Councils outside of South-East Queensland rely on contracted consultants to deliver support in these fields.

Council also identifies the risk that the State facilitated application process could create with regards to council owned and managed infrastructure and the risk of approvals being granted without appropriate alignment given to infrastructure funding and/or on-ground delivery to facility development.

To consider any level of support for the State Facilitated Application process, Council recommends that there needs to be clear criteria outlined regarding the use and assessment criteria of the State facilitated application process which should be reflected in both the Bill and Regulation.

Council notes that if the policy intent of the amendment is to facilitate development that is unreasonably being impacted by outdated assessment benchmarks of a Planning Scheme, the State Government is alternatively encouraged to consider ways in which support can be provided to streamlining the Planning Scheme amendment process. This would provide a more permanent and transparent solution to an issue, rather than a temporary piece-meal solution as proposed by the Bill.

Power of Minister to direct particular amendment of Planning Schemes

This amendment proposed by the Bill will enable the Minister to direct a local government to makes changes to a Planning Scheme to align with State interests of a matter in the *Planning Regulation 2016.* It is noted that Section 26 of the *Planning Act* already provides provision for this, however with additional steps requiring consultation with the local government. The proposed Bill seeks to remove consultation requirements with the local government. It is noted that the Bill proposes that if the local government does not take the action directed that the Minister may take action and recover any expenses from the local government as a debt.

Council Feedback

Council does not object to the principle of aligning State Regulation and the Planning Scheme as sought by the proposed provision and Section 26 of the current Planning Act

Council does however suggest that the State Government would benefit from continuing to consult with local governments to understand the reasons why local government may face challenges with regards to implementing such changes to a Planning Scheme. It is suggested that resourcing constraints would most likely be the predominate reason for any delays, for regional and rural councils in which there is increasing challenges to attract in-house planning support.

Council would suggest that instead of taking a heavy-handed approach as proposed, that the State Government would better support Council's by working in partnership with them and providing the necessary support to implement the relevant amendments to their Planning Scheme. Council suggests that this could be through financial support which in the case of Isaac Regional Council would assist to pay for the necessary consultant fees required to undertake any such amendments and/or the allocation of human resources who could assist with such requirements.

Urban Investigation Zone

The Bill proposes the inclusion of an Urban Investigation Zone (UIZ) which is intended to prohibit most development for 5 years until such time the local government has completed detailed land use and infrastructure planning. The UIZ is not intended to remain in place indefinitely, and a local government intending to use the UIZ must undertake several steps, including drafting an amendment to their planning scheme, to use this zone.

Council Feedback

Council does not object to the inclusion of the zone however it is foreshadowed that the current statutory Planning Scheme amendment processes and the associated lengthy timeframes will likely limit the use of this zone by several local governments. Council questions whether the process to change the zone from UIZ to different zone, will be agile enough to support development in the situation that a local government has progressed planning of a site to a situation where it is development ready. Such amendment processes could result in Council being unable to accept the lodgment of a development application due to the prohibited development status until such time that the Planning Scheme had been amended to change the zone. To this point it is again encouraged that the State Government consider reform to Queensland's Planning Scheme amendment process to enable a more streamlined and affordable process for local government to achieve policy changes and responses to contemporary planning issues and the needs of our communities.

Council further notes that the purpose of the urban investigation zone is:

The purpose of the urban investigation zone is to identify and protect land outside a PIA that may be suitable for urban purposes, subject to further planning and investigation.

The purpose of the UIZ aligns with several of the site's that the Isaac Regional Planning Scheme currently identifies as emerging community, given that further planning and investigation has not been undertaken. To this regard, Council has concerns that the inclusion of the zone and subsequent proposed change to the Purpose Statement of the Emerging Community Zone as detailed in the point below may impact the workability of Councils Planning Scheme.

Emerging Community Zone – Purpose Statement

The amendment proposed by the Bill seeks to change the purpose of the Emerging community zone to:

The purpose of the emerging community zone is to—
(a) identify land—
(i) within a PIA that is intended for an urban purpose in the future; and
(ii) outside a PIA that is intended for an urban purpose in the future and for which detailed land use and infrastructure planning has been carried out; and
(b) protect the land from incompatible uses; and
(c) provide for the timely conversion of the land to land for urban purposes.

Council Feedback

Council notes that the purpose of the Emerging community zone is currently:

The purpose of the emerging community zone is to:
(a) identify land that is intended for an urban purpose in the future;
(b) protect land that is identified for an urban purpose in the future from incompatible uses; and
(c) provide for the timely conversion of non-urban land to land for urban purposes.

Council is concerned that existing sites located in the Emerging Community zone under the Isaac Regional Planning Scheme do not meet the proposed purpose statement of the emerging community zone as they are located outside the PIA but have not undergone detailed land use and infrastructure planning.

To this regard, Council has not had time to consider whether it would seek to amend the zone of these land parcels to the proposed Urban Investigation Zone. If this was required, it would require significant resourcing (human and financial) to undertake for which Council does not possess.

The alternative to the Urban Investigation Zone would involve retaining these sites in the emerging community zone which in effect would reduce the integrity of the Planning Scheme as the site's would not meet the proposed purpose. While Council recognises the transition provision would allow for up to 12 months for the new purpose statement to take effect, Council does not possess human or financial resources to undertake 'detailed land use and infrastructure planning' for these existing Emerging community sites.

Council would accordingly request that the proposed Purpose statement be amended to remove or re-word the purpose regarding detailed land use and infrastructure planning.

Further Consultation

Council has been advised that consultation on the amendments to the *Planning Regulation 2017* are likely to take place in January 2024 for a period of 20 business days. Council would

like to point out that this consultation period would fall partly within the Local Government caretaker period in which time Council would be constrained in being able to respond to the proposed amendments. Given the nature of the proposed Bill in which much of the detail is proposed to be included in the Regulation, Council requests that any consultation period for the Regulation be open until post local government elections.

Council again thanks you for the opportunity to comment on the proposed Bill and is eager to remain engaged in conversation on the proposed Bill.