

Planning (Inclusionary Zoning Strategy) Amendment Bill 2023

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Submitted by: Strata Community Association (Qld)
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The Secretariat
State Development and Regional Industries Committee
Parliament House George Street Brisbane Qld 4000

Re: Planning (Inclusionary Zoning Strategy) Amendment Bill 2023

Dear Committee,

We write with respect of the above.

Introduction

As of 2023, there were over 500,000 lots in more than 50,000 community title schemes across Queensland.

SCA (Qld) is the peak industry association supporting Queensland's strata sector, with more than 1,200 individual and corporate members who help oversee, advise and manage assets worth tens of billions of dollars. As the peak body for the strata industry, SCA (Qld) is in the unique position to understand the sector from all angles. SCA (Qld) members manage approximately 400,000 of the more than 500,000 lots across the state.

SCA (Qld) understand the strata sector from a broad array of viewpoints owing to our diverse membership. We pride ourselves on our ability to advocate from a "whole of industry" perspective. All references to law and regulation in this below submission mean the laws and regulations as applicable in the State of Queensland, unless otherwise specified.

The Queensland Housing Crisis

Queensland is in a housing crisis. Homelessness is up 22% over the past five years¹. Median rents in Brisbane increased 16.3%² in the year to March 2023. This is more than double the underlying rate of inflation- which is also at historic highs. Dwelling values also increased by over 42% over the course of the COVID-19 pandemic³.

Interstate migration through COVID and since have been enormous. Over 100,000 people⁴ moved to Queensland in the 5 years between 2016 and 2021. Queensland is increasing its population about 2% per annum⁵, and frighteningly, 220,000 (more than twice the previous five years) people plan to move to Queensland from Victoria and New South Wales over the next few years. With building and construction costs high and significant skilled labour being used to help construct infrastructure for the Olympic Games, Queensland's ongoing issues may be hard to resolve.

It is important that all stakeholders work cohesively to try and solve these problems. There is no single silver bullet to ensuring that a healthy housing system can be restored in Queensland.

The Bill

The *Planning (Inclusionary Zoning Strategy) Amendment Bill 2023* ("the Bill") attempts to address some of the issues outlined above through mandating that 25% of all new residential development (projects completed on or after July 1, 2024) be gifted to the State of Queensland for the purpose of providing public housing. This includes both detached and attached housing developments.

¹ <https://www.abc.net.au/news/2023-03-20/queensland-homelessness-up-22-per-cent/102113366>

² <https://www.brisbanetimes.com.au/national/queensland/record-brisbane-rent-growth-slows-slightly-see-how-your-suburb-fared-20230405-p5cycf.html>

³ <https://thepropertytribune.com.au/market-insights/queensland-housing-values-soar-by-over-40-during-pandemic/>

⁴ <https://www.sbs.com.au/news/article/why-is-everyone-moving-to-queensland/hct4239lb>

⁵ <https://www.qgso.qld.gov.au/issues/3091/population-growth-ql-202203.pdf>

Given the preference for strata development by most Councils and the State Government Master Plan for South-East Queensland, the Bill will have an enormous impact on our members as strata will be the predominant mode of development going forward. It is likely that strata built after the proposed passage and taking effect of the Bill will exceed strata built prior relatively quickly. Regardless of how long this takes, the impact of the Bill if passed would be enormous and unpredictable. SCA(Qld) has significant concerns about the Bill as drafted, particularly how the Bill would interact with the *Body Corporate and Community Management Act 1997* ("BCCMA").

SCA (Qld) Position

SCA(Qld) does not support the Bill as drafted. We have significant concerns and proposes alternatives which we believe balance the needs of all stakeholders more effectively. Our position can summarised as follows:

1. SCA (Qld) is concerned about the unintended consequences of the State of Queensland (through the Department of Housing) owning one quarter of voting entitlements in every strata community built after the passage of the Bill. Fundamentally the duty of the Department of Housing is to provide appropriate and stable social housing to those who meet the criteria. Whilst this is a noble goal, it may often conflict with what is in the best interests of other residents or owners. Given the Department of Housing will theoretically hold significant sway in the decision-making processes of strata schemes, we have concerns about how the Department may be inclined or indeed obliged to vote on matters affecting the scheme, particularly given it has a duty of care to social housing tenants. The potential unintended consequences of this change are difficult to quantify and plan for.
2. SCA (Qld) strongly supports investment in social housing across Queensland to meet acute need, particularly investment in social housing near appropriate transport hubs, services and economic opportunities.
3. SCA (Qld) supports significantly increasing the volume of strata housing being built across the state, acknowledging the difficulties being faced by people, particularly first home buyers and long-term renters who are in the private market. We urge all Members of Parliament across the political spectrum to embrace strata as the housing future. 95% of housing in Queensland is either owner-occupied or rented from private investors. This supply mix is likely to continue and the best way to ameliorate these issues is to increase the supply in this key component in the market. We also believe putting such a priority on social housing may limit opportunities for home ownership and the benefits this brings to Queenslanders. An emphasis should be placed on increasing the volume of strata housing in Queensland to ensure a greater housing degree of housing choice and affordability for all Queenslanders across the income spectrum.
4. SCA (Qld) maintains additional consumer protections are needed to help drive down the overall cost of housing in bodies corporate.

Unintended Consequences

SCA (Qld) has significant concerns about how the passage of this legislation would interact with the BCCMA. Giving $\frac{1}{4}$ of the voting entitlements in every strata scheme to the Department of Housing creates a plethora of question which are not dealt with in the Bill. The Department of Housing has obligations, first and foremost, to it's tenants. The influence the Department may wield on important considerations for a body corporate is significant and there is no process given in the Bill as to how or if the Department may vote on issues. Body corporate decisions can often be complex and significantly, the interests of the building or the scheme may often conflict with the real or perceived interests of social housing tenants.

It is our view that the conflict of duties to both the body corporate and potential tenants is irreconcilable. Given the rights and responsibilities other owners have and the sway of votes the Department will have, this proposed arrangement is inherently problematic. We do not believe this problem can be solved in a manner which balances the rights and needs of all stakeholders appropriately.

There are other important, very specific matters around body corporate governance which we urge the committee to consider.

- a. Significant body corporate decisions across all types of schemes need to be made by a special resolution. These can include significant spending decisions as well as the alteration of by-laws. A motion is passed by special resolution only if:
 - i. at least two-thirds of the votes cast are in favour of the motion;
 - ii. the number of votes against the motion is not more than 25% of the total number of lots; and
 - iii. the total contribution schedule lot entitlements of the votes against the motion is not more than 25% of the total contribution schedule lot entitlements for all lots in the scheme.

The Department of Housing would in effect, have a veto on the will of owners. In the context of diffuse ownership of strata lots, the threshold for a special resolution is to provide a protection against “tyranny of the majority.” In this context, it effectively removes control of the building from lot owners and places it to a large degree in the hands of the Department of Housing.

- b. The current by-law enforcement processes in body corporate in Queensland are extremely ineffectual. SCA (Qld) currently sits on the Community Titles Legislation Working Group which is exploring this and other issues. Tenants have obligations to follow the by-laws of a strata scheme. The process of enforcement against social housing tenants may be further complicated by having the Department as a large owner in schemes.
- c. In many bodies corporate, it can be difficult to get sufficient volunteers onto the committee. Currently laws allow one nomination for a committee position per lot. Theoretically, the Bill could yield a committee made up entirely of whomever the Department of Housing chooses to act as their agent in the context of the Bill if passed. This possibility is not appropriately explored and again raises the potential for significant deleterious consequences for a huge number of Queenslanders.

Support for Investment in Social Housing

SCA (Qld) acknowledges the need for significant investment in social and affordable housing. Estimates from welfare groups⁶ suggest Queensland needs as many as 6,000 new social and affordable homes per annum to ensure supply keeps up with demand. SCA (Qld) supports investment in social and affordable housing to ensure supply meets projections for demand. SCA (Qld) believes in significant investment in social and affordable housing in a diverse range of suburbs to provide choice and opportunity to social housing tenants.

SCA (Qld) believes it is the job of the Government, not the private sector to deliver social housing stock. It is important that social housing is located both in areas of need as well as near economic and social infrastructure to help enhance opportunity for vulnerable people. We urge Government to invest substantially in public housing to ensure vulnerable Queenslanders have a roof over their heads.

Home Ownership and Supply

SCA (Qld) believes home ownership is a critical plank in the Australian social contract and that widespread home ownership is a critical part of ensuring social stability and cohesion. We maintain all tiers of Government should work cohesively to encourage supply of housing by being rational in their approaches to development. Whilst community consultation is inevitably part of the planning process, Government and Councils should focus on the overarching need for housing supply as their primary public policy concern in this space.

⁶ <https://www.couriermail.com.au/news/queensland/qld-politics/qld-budget-2023-64m-boost-to-emergency-housing/news-story/17f399d4ba72988880da9c8e0425998f>

Increasing supply of housing available for purchase or private rental within the marketplace is the most effective way of ensuring that widespread home ownership or affordable rent relative to income remains an accessible possibility for all in our community, particularly those on low and middle incomes. Given over 95% of housing in Queensland is provided by the private market, removing restrictions on supply within this important plank of the housing market will ensure that more Queenslanders have a place to call home.

Queensland has a growing population and relatively arbitrary restrictions on the supply of housing, particularly in desirable locations where infrastructure already exists should be eliminated insofar as possible. It is important to understand just how significant restrictions on supply are in terms of increasing property prices. A report by the RBA in 2018 about the effect of zoning restrictions indicated that 73% of the land cost component of a detached house, and around 40% of the cost of an apartment in Sydney⁷ was caused by arbitrary zoning restrictions. The report also stated:

"We... find evidence of a large gap opening up between apartment sale prices and construction costs over recent years, especially in Sydney."

"This suggests that zoning constraints are also important in the market for high-density dwellings.^{ibid}"

This report examined data from 2016, when dwelling values across all markets were significantly lower. Whilst the report by the RBA focused on Sydney, it reported significant zoning costs for other capitals. This is likely to have been exacerbated, particularly in Queensland given the significant population influx and construction slowdown.

A rational response to this issue would be to build more high-density housing in appropriate locations identified to help alleviate the current pressures facing Queenslanders. The positives associated with increasing strata development for low and middle income earners particularly cannot be overstated.

In the first quarter of 2023, the disparity between the price of detached houses in Brisbane and strata properties (townhouses, units, etc) was approximately \$300,000.000⁸. This means, by default, that strata properties help allow a broader demographic of Queenslanders to own their own home. The social and economic positives of widespread home ownership are immense. In addition to allowing families to plan and giving businesses access to stable labour forces home ownership has numerous social benefits too- including creating community and ameliorating loneliness.

Whilst home ownership at face value may do little to mitigate feelings of loneliness, there is demonstrated evidence that owning a home delivers emotional and social benefits beyond improving an individual's balance sheet. Home ownership is demonstrated by research to have meaningful positive effects on feelings of inclusion and community⁹.

Homeowners have stronger social networks, are more likely to see friends and relatives and are more likely to be active members of clubs and associations¹⁰. All of these activities help ameliorate loneliness, build social connection and cohesion and ensure that people have positive human interactions. These benefits are believed to come through feelings of greater stability and security which is associated with home ownership.

Government has placed restrictions on the release of land where the majority of the population of Queensland currently lives (SEQ). Strata allows denser dwelling construction. Without expanding the number of strata schemes approved (perhaps even in excess of present targets), there is little doubt that home ownership may be financially out of reach for an increasing number of Queenslanders, particularly in the Southeast. If this occurs, feelings of isolation and lower social engagement (in the

⁷ <https://www.afr.com/policy/economy/zoning-rules-cost-home-buyers-a-fortune--and-itll-get-worse-says-rba-20180308-h0x6uh>

⁸ <https://propertyupdate.com.au/whats-ahead-brisbanes-property-market/>

⁹ Stillman, S. and Liang, Y., 2010. Does Homeownership Improve Personal Wellbeing?.

¹⁰ Dockery, A. and Bawa, S., 2019. Why Do Home-Owners do Better?. *State of Australian Cities Conference and PhD Symposium*.

forms outlined above) are likely to increase based on the available data. This is antithetical to the goals of all levels of Government. SCA (Qld) submits that the State Government should examine the SEQ Regional Plan with a view to significantly enhancing high and medium density housing in the private market.

An increase in supply will also help the long term rental market, as more people move from renting to owner occupier status or have a greater variety of options for a rental at a more affordable price point.

Additional Consumer Protections

The hidden costs of housing

One of the most significant barriers to entry for would-be home buyers in the additional cost imposed on them in the form of body corporate fees and levies when they choose to enter a community housing scheme such as an apartment or townhouse development. These fees need to be calculated as part of future housing expenses, and therefore impact on ability to service loans and therefore the purchase price a buyer is able to pay. Similarly for those seeking to enter the rental market, higher body corporate costs are passed on to tenants as increased rent. This in turn impacts on renters' savings and their ability to accumulate a deposit for their own property purchase.

The fees paid to Management Rights holders in community housing schemes are largely hidden from public view and public debate. However these fees and charges represent the bulk of costs for many bodies corporate, and they should be considered as part of the "affordable housing" equation, whether for first-time buyers or renters. Management rights is the name given to a business conducted for a strata scheme by a contractor who holds the rights to provide caretaking services and offer a letting service for lots within the scheme. Typically, the manager or caretaker lives on-site at the scheme. Duties tend to include general maintenance and cleaning of the scheme. The manager will often have exclusive rights to conduct a letting business onsite. There are estimated to be over 4,000¹¹ such businesses in Queensland.

Unfortunately, many new owners of lots in community house schemes find themselves saddled with very high and escalating costs to service Management Rights contracts put in place before they joined the body corporate. In most cases these contracts were put in place by the original developer, who sold the Management Rights and retained the revenue. Under the *Body Corporate and Community Management (Accommodation Module) Regulation 2020* (Qld) (the "Accommodation Module"), these contracts may bind future bodies corporate for up to 25 years, with escalating fees and charges. While this is highly lucrative for the developer, it simply adds to the costs for unit owners who then must pay the Management fees for the life of the 25-year contract. As outlined above, these costs necessarily flow to the cost of ownership or renting for those seeking accommodation.

Further, use of the provisions of the Accommodation Module has now grown well beyond the originally intended purpose – to support short-term holiday unit letting and serviced apartments. The provision is increasingly being used in developments that are clearly intended to be homes for owners or long-term tenants, rather than short-term rentals.

SCA (Qld) submits that addressing these hidden and escalating fees, put in place by developers to bind owners for decades into the future, will go a long way to easing the costs of housing and reducing barriers to entry for new participants.

Conclusion

¹¹ Wicks, S., 2022. *Making Money in Management Rights*. [online] Blog.agredshaw.com.au. Available at: <<https://blog.agredshaw.com.au/management-letting-rights-growing-my-mlr#:~:text=A%20Management%20Letting%20Rights%20business,on%20holiday%20letting%20outside%20Brisbane>> [Accessed 18 July 2022].

Social housing is an important safety net for our most vulnerable Queenslanders and requires appropriate investment by Government to ensure that those in greatest need are able to have a roof over their heads. Despite this, the aspiration of a super majority of Queenslanders is to own their own home, and limiting their opportunities to do so is not in the overall interest of the State. The social and economic good of home ownership cannot be overstated. SCA (Qld) suggests that politicians from all political parties and at all levels of Government work together to substantially increase the supply of strata housing, acknowledging it is the cheapest, most effective way of delivering housing to a growing population.

Kind regards,



Laura Bos (General Manager SCA (Qld))