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

Report No. 51, 57th Parliament

State Development and Regional Industries Committee

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State Development and Regional Industries Committee

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All web address references are current at the time of publishing.

Contents

Chair's foreword

This report presents a summary of the committee's examination of the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill.

The committee's task included consideration as to whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the Human Rights Act 2019.

The challenges facing the housing sector are complex and widely reported. This Bill amends the Planning Act 2016 to optimise the planning framework's response to current housing challenges by introducing a suite of new tools and process improvements to the planning framework.

Among other things, the Bill enables the state to take land or create easements to deliver critical infrastructure; provides for a streamlined, state facilitated application process for developments of state priority such as affordable housing; and introduces a new zone to assist local governments better sequence development and enable important land use planning to take place. It is clear to me the latter two initiatives would be welcomed by most submitters as two innovative processes that can have a positive impact on housing availability and affordability.

As noted, this Bill introduces new tools and processes to help alleviate housing pressures. Many submitters put forward a range of other suggestions they believe would also address housing pressures, yet many of these fell outside the scope of the Bill. Many of these suggestions align with the comprehensive suite of measures being undertaken by the State Government, which are detailed in the "Queensland Housing Summit: Outcomes Report"[1] and the "Queensland Housing Roundtable: Our Response."[2]

This Bill has been introduced after a long and extensive period of consultation with stakeholders such as the LGAQ and the Council of Mayors, as indicated by the Department. Inquiry participants told us that it was important that more consultation take place on instruments which underpin and operationalise the measures outlined in this Bill. The committee agrees and we have recommended that further consultation on the Planning Regulation and supporting instruments take place outside of the local government caretaker period.

On behalf of the committee, I thank all individuals and organisations who made written submissions and attended the public hearing. I also thank my fellow committee members and the committee's secretariat.

I commend this report to the House.

Chris Whiting MP

Chair

[1] To view Queensland Housing Summit: Outcomes Report (https://www.qld.gov.au/__data/assets/pdf_file/0024/333366/Housing-Summit-outcomes-report.pdf)

[2] To view Queensland Housing Roundtable: Our Response (https://www.qld.gov.au/__data/assets/pdf_file/0018/434034/Premiers-Factsheet-1-year-anniversary-Housing-Summit-20.10.2023.pdf)

Recommendations

1 Introduction and overview

1.1 Policy objectives

The primary objective of the Bill is to amend the *Planning Act 2016* (Planning Act) to optimise the planning framework's response to current housing challenges. The Bill does this by introducing a suite of new planning tools and making operational and process improvements to the existing planning framework.[3]

1.1.1 Growth area tools

The Bill seeks to deliver more housing and land supply through several targeted interventions. This includes provisions in the Bill which:

- enable the state to take land or create easements for planning purposes to deliver critical infrastructure to support development **(see section 2.2 of this report)**
- provide a state facilitated application process to streamline the assessment of development applications for matters of state priority, for example, affordable housing **(see 2.3)**
- provide for the use of a new zone called an Urban Investigation Zone (UIZ) to assist local governments better sequence development and allow for detailed land use planning to occur.[4] **(see 2.4)**

1.1.2 Operational amendments

The Bill also amends the Planning Act to create operational efficiencies and improvements in the planning framework by:

- establishing a head of power for the Planning Regulation 2017 (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 **(see 2.5)**
- 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, without first giving notice to the local government **(see 2.6)**
- modernising requirements for public notice requirements, accessing documents and notices and making submissions **(see 2.7)**
- improving the functionality of applicable event declarations and temporary use licences **(see 2.8)**
- allowing the appeal period for an infrastructure charges notice (ICN) to be suspended from the day representations were made without first giving a notice to the local government if the representations are withdrawn **(see 2.9)**
- prescribing 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 **(see 2.10)**
- making other process improvements to ensure the planning framework is as efficient as possible.[5]

[3] Explanatory notes, p 1.

[4] Explanatory notes, p 3.

[5] Explanatory notes, pp 4-5.

1.1.3 Development Control Plans

In relation to development control plan (DCP) areas, the Bill seeks to:

- validate past approvals granted in DCP areas following the Planning and Environment Court judgment in *JH Northlakes Pty Ltd v Moreton Bay Regional Council* [2022] QPEC 18 (the Northlakes decision) which found that development assessment in DCPs must be under certain repealed planning legislation
- modernise the development assessment system applying to DCPs. **(see 2.11)**

1.1.4 Urban encroachment

The Bill also seeks to improve the urban encroachment provisions by reducing the regulatory burden associated with re-registration and renewal processes. **(see 2.12)**

1.2 Legislative compliance

The committee's deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001* (Parliament of Queensland Act), *Legislative Standards Act 1992* (Legislative Standards Act) and the *Human Rights Act 2019* (Human Rights Act).

1.2.1 *Legislative Standards Act 1992*

The committee considered several fundamental legislative principle issues relating to compulsory acquisition and property rights, and administrative power and natural justice. In all cases, the committee was satisfied that potential breaches were reasonable and sufficiently justified.

Part 4 of the Legislative Standards Act requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly and sets out the information an explanatory note should contain. The committee was satisfied that all requirements have been met.

1.2.2 Human Rights Act 2019

The committee was satisfied that the Bill was compatible with the Human Rights Act.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the Human Rights Act. While it contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights, some further detail on the extent of impacts and analysis underpinning the Minister's view that a fair balance had been struck would have assisted readers to understand the issues.

The committee considered limitations relating to the right to freedom of expression; the right to take part in public life; property rights; the right to equality before the law; and the right to enjoy private, family and home life.

The committee was satisfied in all cases that potential limits were reasonable and demonstrably justified in the circumstances.

1.3 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023 be passed.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Support for intent of Bill

The challenges facing the housing sector are complex and widely reported. This Bill introduces legislative changes to the planning framework to remove barriers to the development of new housing.

The Bill follows a commitment by the Queensland Government at the Queensland Housing Summit and is one of a package of measures to be implemented to address housing challenges facing the state.

Support for the intent of the Bill was wide ranging with almost all inquiry participants – representing local government, housing and development industry, community interests and legal sectors – acknowledging that steps must be taken to address housing supply and diversity. That said, all sectors were not always in agreement as to the most appropriate government interventions to achieve this or how those interventions should be applied in practice.

Many inquiry participants also offered views on alternative social, housing and economic policy solutions to address housing matters. This report focusses only on those measures proposed by the Bill.

2.1.1 Consultation

Consultation was a common theme raised by inquiry participants.

The Department of State Development, Infrastructure, Local Government and Planning (the department) advised that the Bill was informed by consultation with key stakeholders. This Bill combines the previously proposed Priority Growth Areas (PGA) Bill with other Planning Act amendments and targeted stakeholder consultation was undertaken with around 130 stakeholders on the policy intent of the PGA Bill which occurred from 31 March to 14 April 2022 and involved a number stakeholder meetings throughout 2022 and 2023.[6]

The department also undertook public consultation about the policy intent for the proposed amendments to the Planning Act relating to DCPs, urban encroachment and the operational amendments for 20 business days from 4 April to 5 May 2023. This consultation also included the policy intent supporting changes to the *Planning and Environment Court Act 2016*, *Economic Development Act 2012*, *Integrated Resort Development Act 1987* and *Sanctuary Cove Resort Act 1985*.[7]

The department provided a comprehensive list of all organisations consulted on various aspects of the Bill, which is published on the committee's website.[8]

Despite this, several inquiry participants (including key stakeholders) told the committee that they had not been consulted on all parts of the Bill. Furthermore, the intention to include much of the underlying detail on how certain measures in the Bill would operate in subordinate legislation through amendments to the Planning Regulation, resulted in some stakeholders reporting that they were unable to fully understand the impact of the Bill.

In correspondence to the committee, the department acknowledged the views of stakeholders, and outlined its intention to undertake further consultation in relation to amendments to the Planning Regulation and supporting instruments which operationalise the various provisions in the Bill.

6 DSDILGP, correspondence, 18 November 2023, p 2.

7 DSDILGP, correspondence, 18 November 2023, p 2.

8 DSDILGP, correspondence, 18 November 2023, p 5.

Potential amendments to the Planning Regulation, Development Assessment Rules, and Ministerial Guidelines and Rules (MGRs) are expected to be released for public consultation in early 2024.[9]

Committee comment

The committee acknowledges the diversity of views regarding the consultation undertaken on some aspects of the Bill. It is vitally important that suggested amendments to the Planning Regulation and supporting instruments which underpin the measures outlined in this Bill be subject to comprehensive public consultation to ensure that they are workable and achieve the intended benefits.

Inquiry participants told us that the timing of any further consultation will be important. The local government sector called for consultation to take place outside of the upcoming caretaker period, and that a suitable amount of time be provided to enable groups to liaise with their networks. We also encourage the government to seek the views of the Queensland Housing Supply Expert Panel in undertaking any process.

Recommendation 2

That the Department for State Development, Infrastructure, Local Government and Planning undertake a consultation process on amendments to the Planning Regulation 2017 and supporting instruments which underpin this Bill outside of the local government caretaker period.

2.2 Acquisitions and easements

Clause 43 creates the power for the state to take land or an easement, or create a new easement to deliver development infrastructure such as water infrastructure, transport infrastructure, parks and community facilities.

The measure is intended to address barriers caused by land fragmentation (smaller land parcels held by multiple owners) as the process for negotiating sale of this land can be costly and time-consuming, meaning developers are unable to bring housing that is connected to essential infrastructure on the market quickly.[10] A departmental review of 75 underutilised urban footprint sites in South East Queensland (SEQ) identified that a lack of development infrastructure was a critical barrier for development occurring on these sites.[11]

The powers provided under the Bill are similar to those currently afforded to local governments under the Planning Act and the provision would confer an equivalent power on the Planning Minister.[12]

The Bill provides that the state may take land for development infrastructure in the following circumstances:

- the Minister considers the infrastructure is necessary to facilitate development
- the Minister is satisfied that reasonable steps are taken to obtain agreement of the owner of the land but the owner has not agreed to the proposed actions
- an infrastructure agreement has been entered into providing for or paying for the infrastructure under Chapter 4 of the Planning Act
- a person has entered into an infrastructure agreement with the department about the costs of taking the land
- the taking of land complies with criteria to be outlined in an amended Planning Regulation

9 DSDILGP, correspondence, 18 November 2023, Attachment 3.

10 DSDILGP, Easements and Acquisitions, Fact Sheet, p 1.

11 Explanatory notes, p 3.

12 DSDILGP, Easements and Acquisitions, Fact Sheet, p 1.

- the Governor-in-Council approves the taking of land by regulation.[13]

Under the Bill, if the state takes land for this purpose, the land will be vested in a public sector entity such as a local government, state agency or utility provider.[14]

It is intended that the existing process for acquisition and compensation payable under the *Acquisition of Land Act 1967* (Acquisition of Land Act) will apply to this part of the Bill. Powers extend beyond the scope of this legislation by allowing the state to acquire land, even when there is a benefit for a private entity such as developers or landowners.[15]

Should the Bill be passed, it is expected that the Planning Regulation will be amended to include further detail on the criteria and process to be used by the state in considering whether to take land under this provision.[16]

2.2.1 Stakeholder views

2.2.1.1 Broad support

There was broad support for the intent of this measure from almost all inquiry participants.[17]

Development industry peak bodies told the committee that the failure to achieve easements in logical locations is resulting in housing supply projects being abandoned, substantially delayed or increasing costs in rerouting trunk infrastructure which is ultimately adding costs to homebuyers.[18]

For example, the Urban Development Institute of Australia (UDIA) which submitted strong support for the measure, outlined the results of a 2020 survey with its members which indicated that more than 6,600 dwellings were held up by delays associated with obtaining easements for the delivery of trunk infrastructure.[19] The Planning Institute of Australia (PIA) also supported the measure noting that similar powers are rarely used by the local government sector so it will be necessary to ensure the power is exercised in appropriate circumstances and the department is resourced adequately to assist the Planning Minister perform this function.[20]

From a community housing perspective, Q Shelter submitted that access to affordable land in well-located areas is one of the largest barriers to developing affordable housing and this is further exacerbated by fragmented land ownership and the inability of community housing providers to obtain land of a sufficient size suitable for redevelopment or to provide the necessary infrastructure to service the development.[21]

Local governments also supported efforts to resolve land ownership fragmentation preventing the delivery of housing.[22] However, offered further suggestions on the practical operation and detail relating to the measure which are discussed further below.

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13 Bill, cl 43.

14 DSDILGP, Easements and Acquisitions, Fact Sheet, p 1. https://documents.parliament.qld.gov.au/com/SDRIC-F506/HAAPOLAB20-CAB2/Fact%20Sheet%20-%20Easements%20and%20Acquisition%20Powers%20.pdf

15 DSDILGP, Easements and Acquisitions, Fact Sheet, p 1.

16 DSDILGP, correspondence, 8 November 2023, Attachment, p 21.

17 See submissions from Queensland Law Society (QLS), submission 24, p 2; UDIA, submission 19, p 2; Ipswich City Council, submission 22, p 2; Planning Institute of Australia, submission 10, p 2; REIQ, submission 2; Q Shelter, submission 7.

18 UDIA, submission 19, p 2.

19 UDIA, submission 19, p 2.

20 Planning Institute of Australia, submission 10, p 3.

21 Q Shelter, submission 7, p 2.

22 CoGC, submission 20, p 3; Brisbane City Council, submission 5, p 1;

2.2.1.2 Criteria

Several inquiry participants (including from local government and the housing industry) sought clarity on the criteria that would be used by the state in determining whether to use these provisions. In response, the department advised that amendments to the Planning Regulation are expected in 2024 which will address the criteria. This will include detail that may be required to satisfy the Minister that the acquisition is necessary to facilitate the development.[23]

QLS were of the view that the criteria should be included in the primary legislation, not regulation, due to the potential for a compulsory acquisition process and to meet fundamental legislative principles.

2.2.1.3 Consultation with local government and utility providers

Some local governments questioned how they would be consulted during any acquisition process. For example, Brisbane City Council's concern was that land could be taken by the State and vested in council for development infrastructure networks which council maintains and operates, without any requirement for council to agree to the nature, scope or appropriateness of the infrastructure to be provided.[24] Brisbane City Council also sought clarification on how infrastructure agreements would be developed, and costs determined.[25]

In response, the department stated that the Minister and department will work collaboratively with local governments and utility providers in determining whether development infrastructure is needed. The department also undertook to investigate how local governments and utility providers will be consulted as part of the Minister's consideration of easements and acquisitions proposed under the provisions, either through the Bill or subordinate legislation or other supporting tools or operational material.[26]

2.2.1.4 Joint easements

Urban Utilities outlined its support for the provisions and submitted that further clarification or amendment to the Bill was required at sections 263B-263G to address situations where joint easements are sought by more than one entity. For example, in cases where Urban Utilities might seek a water supply or wastewater easement and the relevant council is seeking to build a stormwater drain or bikeway along the same alignment.[27]

The department acknowledged this point and undertook to provide further clarity in the Bill or supporting subordinate legislation or tools.[28]

2.2.2 Fundamental legislative principles and human rights - property rights

The committee considered the fundamental legislative principle that compulsory acquisition of property should be only with fair compensation[29] and the broader principle that legislation should be generally protective of common law property rights, as the Bill limits a landholder's property rights.[30] The committee also considered the potential impacts, both positive and negative, to the human right to property.[31]

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23 DSDILGP, correspondence, 8 November 2023, Attachment, p 24.

24 Brisbane City Council, submission 5, p 1.

25 Brisbane City Council, submission 5, p 2.

26 DSDILGP, correspondence, 8 November 2023, Attachment, p 23.

27 Urban Utilities, submission 27, p 3.

28 DSDILGP, correspondence, 8 November 2023, Attachment, p 22.

29 Legislative Standards Act, s 4(3)(i).

30 OQPC, Notebook, p 97.

31 Human Rights Act, s24.

Committee comment

The committee is satisfied that this measure is reasonable and appropriate.

The primary objective of this measure is to unlock housing supply where fragmentation is a critical barrier. This is an important and relatively simple lever which was supported by almost all inquiry participants. This, coupled with the fact that compensation provisions outlined in the Acquisition of Land Act would apply satisfies the committee that the potential beach of fundamental legislative principle and limitation to the human right to property is sufficiently justified.

The committee agrees with the views of the local government sector that further clarification is required on how local governments will be consulted as part of the Minister's consideration of easements and acquisitions. The committee is of the view that formal arrangements should be stipulated in either the Bill or supporting regulation. The committee also agrees that further clarification is required on situations where easements are sought by more than one public entity. This should also be addressed in either the Bill or supporting regulation.

2.3 State facilitated application process

Clause 74 inserts new provisions for a new state facilitated application process to introduce a streamlined development assessment pathway for development that is a priority to the state, for example affordable housing.[32] The Bill also amends the Planning and Environment Court Act to provide that a development approval under this process cannot be appealed in the Planning and Environment Court, except by the assessment manager.[33]

The measure is intended to complement existing Ministerial powers under the call in process and Ministerial Infrastructure Designations provisions.[34] The state facilitated application process has a number of differences which are discussed further in section 2.3.1 below.

Further detail on the assessment process, and the criteria that the Minister will use in considering whether an application will be state facilitated is to be included through amendments to the Planning Regulation.

2.3.1 Stakeholder views

2.3.1.1 Support

There was broad support from the housing and development sector, including Q Shelter, PIA, Property Council of Australia (PCA) and UDIA for the state facilitated application process.[35]

For example, the UDIA submitted that the process provides a substantial opportunity to bring forward housing supply and determine development applications for proposals which are languishing in the local government system due to reasons such as inadequate resourcing, other restrictions due to zoning and third-party rights of appeal.[36]

Queensland Council for Social Science (QCOSS) also outlined support for state facilitated applications that relate to the delivery of social and affordable housing in Queensland.[37]

32 Explanatory notes, p 39.

33 Explanatory notes, p 4.

34 Explanatory notes, p 39.

35 DSDILGP, correspondence, 8 November 2023, p 25.

36 UDIA, submission 19, p 3.

37 QCOSS, submission 3, p 3.

2.3.1.2 Duplication of existing powers

Several submitters suggested that the measure was unnecessary as it duplicated existing Ministerial powers already provided in the Planning Act.[38]

In response, the department advised that while similar to other mechanisms, the state facilitated application process addresses several gaps. The Ministerial Infrastructure Designation pathway is limited to infrastructure defined in schedule 5 of the Planning Regulation which includes only wholly social or affordable housing but not a mix of private and affordable/social housing; it also requires compulsory pre-application meetings with the State.[39] Furthermore, the state facilitated application process differs from the Ministerial call in process by allowing the Chief Executive the ability to apply a comprehensive, whole of site assessment using the State Planning Policy, regional plan and purpose statements of the State Development Assessment Provisions.[40]

2.3.1.3 Process and assessment provisions

Several inquiry participants, particularly local government representatives, called for more information on how such applications would be assessed and how the scheme would operate in practice.[41]

The Local Government Association of Queensland (LGAQ) recommended that should this pathway be progressed it was important that clear criteria be established, in consultation with local government, and that it be prescribed in the Planning Act, to determine when a 'state priority' will be declared to give certainty to local governments, the community and development industry.[42]

Council of Mayors, South East Queensland (CoMSEQ) reiterated this view stating that SEQ Councils seek further clarity to understand how this measure will be implemented. CoMSEQ also called for information on the measures the state intends to use to manage any unintended outcomes arising as a result of bypassing provisions within planning schemes.[43]

In response, the department confirmed that the pathway for State facilitated applications is not intended to be an avenue to bypass prohibitions or local government planning schemes. Most prohibitions, with the exception of the prohibition relating to the UIZ, will continue to apply to State facilitated applications.

The department also confirmed that prior to declaring a state facilitated application, the Minister will be required to seek representations from the local government about the proposed declaration and must consider any representations that are received. Furthermore, the Chief Executive, in assessing the application may consider any planning instrument relevant to the development, including local government planning schemes. The Chief Executive will also be required to consult with local government for advice, in assessing the state facilitated application.[44]

2.3.1.4 Community consultation

The LGAQ submitted that there is no 'one-size-fits-all' response to the housing crisis and that it is therefore critical to maintain the autonomy of local government to make decisions in consultation with their local communities.[45] The LGAQ advised that the proposed provisions present the risk of

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38 Ipswich City Council, submission 22, Attachment 1, p 1; Brisbane City Council, submission 5, p 3; South East Queensland Community Alliance, submission 8, p 3;

39 DSDILGP, correspondence, 8 November 2023, p 26.

40 DSDILGP, correspondence, 8 November 2023, p 26.

41 UDIA, submission 19, p 4.

42 LGAQ, submission 18, p 15.

43 Council of Mayors SEQ (CoMSEQ), submission 4, p 2.

44 DSDILGP, correspondence, 8 November 2023, p 23.

45 LGAQ, submission 18, p 14.

undermining public trust in the planning system and called for assessment benchmarks to be prescribed by regulation and made publicly available to ensure state decisions are made with integrity and transparency.[46]

2.3.1.5 Criteria to be placed in subordinate legislation

The Queensland Law Society (QLS) cautiously supported the proposal however expressed reservations about prescribing criteria for declaring a State facilitated application in subordinate legislation rather than primary legislation, particularly given the significant consequences which could flow from such a declaration.[47]

The department advised that to ensure that these powers are still subject to Parliamentary scrutiny, the Minister will be required to report declarations made and the decisions made by the Chief Executive each financial year.[48] The Minister is also required to table a report in the Legislative Assembly each financial year which states the number of decisions and includes the reports prepared by the chief executive.[49]

2.3.1.6 Ministerial ability to override decisions of the Planning and Environment Court

The was some uncertainty amongst inquiry participants as to whether the assessment process could override decisions of the Planning and Environment Court.

For example, QLS sought information about when a declaration of a state facilitated application can be made and specifically, whether a declaration could be made after an appeal has been decided.[50] QLS acknowledged that the processes in the Bill are clearly intended to maximise flexibility, but suggested that it introduces significant uncertainty for applicants with applications which are subject to proposed new section 106D(2) of the Planning Act.[51]

The committee examined this matter further. The department advised that the Minister could declare an application to be a state facilitated application when it is being assessed by the Court under section 106A, which then stops the appeal and allows the Minister to assess the application as a State facilitated application.[52] However, the department confirmed that it is not the intent for the Minister to be able to override the decisions of the Planning and Environment Court and that this matter will be considered further and addressed through amendments to the Bill during the consideration in detail process.[53]

2.3.1.7 Infrastructure charges

Several inquiry participants from the local government sector sought to clarify arrangements regarding the setting of infrastructure charges.

In response, the department confirmed that new section 106H(3) outlines the effect of the declaration in stage 2 and clarifies that local governments will still have the ability to impose an infrastructure charges notice for an approval given through the state facilitated application process. Furthermore, the Bill as drafted does not allow for the Minister to waive or override local government's ability to impose an infrastructure charges notice.[54]

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46 LGAQ, submission 18, p 16.

47 Queensland Law Society, submission 24, pp 3-4.

48 DSDILGP, correspondence, 8 November 2023, p 32.

49 Explanatory notes, p 10. See also cl 74, inserts Planning Act, s 106N.

50 Queensland Law Society, submission 24, pp 3-4.

51 Queensland Law Society, submission 24, pp 3-4.

52 DSDILGP, correspondence, 18 November 2023, Attachment 2, p 3.

53 DSDILGP, correspondence, 18 November 2023, Attachment 2, p 3.

54 DSDILGP, correspondence, 18 November 2023, Attachment 2, p 3.

2.3.1.8 Removal of third party appeal process

Several submitters including the City of Gold Coast, SEQ Community Alliance, Brisbane Residents United and Gecko Environmental Council did not support the removal of third party appeal rights.

In response, the department advised that the state facilitated application process is intended to be more efficient in delivering development 'on the ground' and provide greater certainty by removing third party appeal rights. The removal of the third party appeal process will assist with minimising time delay of converting approvals into delivery.[55]

The department also advised that to ensure land owners, community and other stakeholders have an opportunity to have their say, this is balanced by requirements to undertake initial consultation and a compulsory pre-application meeting with the state.[56]

2.3.2 Fundamental legislative principles and human rights – Administrative power and natural justice

The committee considered this measure from a fundamental legislative principle and human rights perspective as legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.[57] Legislation should also be consistent with the principles of natural justice.[58] This includes the right to be heard, being afforded procedural fairness and having an un-biased decision maker.[59] It also raises issues of administrative power, in that the Minister has a broad discretionary power to declare a state facilitated application with limited options for review.

The measure also potentially impacts on the human rights to equality before the law and freedom of expression.

Whilst the Minister must give notice about a proposed declaration of a State facilitated application and there is an opportunity for certain parties to make representations to the Minister about the proposed declaration within the 15-day notice period (which the Minister must consider when deciding to make the declaration), there is no avenue for appeal of the decision by the Minister to make the declaration.

Whilst acknowledging the broad, discretionary criteria for declaring and assessing state facilitated applications, the explanatory notes contend that such powers are limited to circumstances where the Minister is satisfied that the development is a priority for the State.[60]

> These powers are intended to deal with occasions that may arise where a State priority (such as affordable housing to ease housing challenges) could be severely affected by the implementation of a development approval.[61]

Under the Bill, it is not possible to bring declaratory proceedings in the Planning and Environment Court against the Minister's decision to declare a State facilitated application or the chief executive's decision on a State facilitated application, except by the assessment manager in limited circumstances.[62] According to the explanatory notes, appeals against the Minister or chief executive's decision would be 'inconsistent' with the intent of the Bill.

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55 DSDILGP, correspondence, 8 November 2023, p 30.

56 DSDILGP, correspondence, 8 November 2023, p 30.

57 LSA, s 4(3)(a).

58 LSA, s 4(3)(b).

59 OQPC, Notebook, pp 24-32.

60 Explanatory notes, p 9.

61 Explanatory notes, p 9.

62 Explanatory notes, p 10.

> This is because, decisions of both the Minister and the chief executive for a state facilitated application under the Bill are effectively policy decisions of executive government, made to protect or give effect to a State priority.[63]

Despite there being limited options for review of these decisions, there will be a level of Parliamentary oversight.

Committee comment

The committee is satisfied that provisions relating to a state facilitated application process are reasonable and appropriate.

We acknowledge the views of stakeholders that further clarification around the declaration criteria and assessment process is required. We therefore reiterate our recommendation that consultation on amendments to the Planning Regulation is vitally important to ensure that the measure achieves its intended benefits.

The committee also considered this measure from a fundamental legislative principle and human rights perspective in particular, limitations to appeal and review rights. The committee is satisfied that the potential limitations are justified by the need to address housing challenges in Queensland.

Recommendation 3

That in relation to the state facilitated application process, the Government consider amending the Bill to clarify arrangements where an application is the subject of a decision by the Planning and Environment Court or an application is before the Planning and Environment Court.

2.4 Urban Investigation Zones

The Bill provides for the use of a new zone called an Urban Investigation Zone (UIZ) which is a transitional zone intended to allow local governments to put land in a holding pattern until detailed land use and infrastructure planning can be undertaken by prohibiting most types of development.[64]

The UIZ is intended to respond to issues associated with managing growth in areas like Emerging Community Zones (ECZ) including the inability for local governments to prevent development occurring in these areas, despite there being insufficient land use and infrastructure planning completed.[65] This can result in development occurring prematurely or in way that contradicts the local government's intent, which can lead to higher costs for local governments and communities and short-term focussed development. These areas can also result in the land being underutilised, with limited housing and serviced land supply. [66]

The Bill provides that a change of the zoning of land to a UIZ is not an adverse change under the Planning Act and therefore does not attract compensation if the process in the Minister's Guidelines and Rules is followed.[67]

The UIZ is not intended to remain in place indefinitely. Under the Bill, the zone is required to be reviewed every 5 years. Furthermore, the provisions can only be used after following a process in the Minister's Guidelines and Rules to ensure all other options were considered.[68] The committee has not reviewed the intended process outlined in the Minister's Guidelines and Rules.

63 Explanatory notes, p 10.

64 DSDILGP, Urban Investigation Zone, Fact sheet, p 1.

65 DSDILGP, Urban Investigation Zone, Fact sheet, p 1.

66 DSDILGP, Urban Investigation Zone, Fact sheet, p 1.

67 Explanatory notes, p 4.

68 Explanatory notes, p 4.

2.4.1 Stakeholder views

2.4.1.1 Support

Organisations including QShelter, PIA, Noosa Council, Bundaberg Regional Council and Organisation Sunshine Coast Association of Residents (OSCAR) outlined their support for the provisions.[69]

For example, PIA submitted that the proposed UIZ will assist local governments to better sequence development and focus resources to maximise the efficiency of land release. PIA also supported the protection of future growth areas from inappropriate development, including preventing the fragmentation of land or development that may prejudice long-term urban development outcomes.[70]

2.4.1.2 Process and operation

Inquiry participants called for more information on how the UIZ process would operate in practice.

In response, the department acknowledged feedback about the detailed process and mechanics associated with the proposed UIZ zone. The department advised that the intent of the proposed zone is to assist local governments in better planning and sequencing land use and infrastructure within their local government areas. The department will work with the LGAQ, local governments and other interested stakeholders to ensure the proposed zone is workable and that the process, timing and operations giving effect to the zone are worked through in detail to inform the preparation of guidance materials.[71]

2.4.1.3 Review timeframe

The Bill provides that a local government must review a UIZ every 5 years. Several inquiry participants including UDIA, PCA, PIA and QShelter suggested that a 5 year period is too lengthy and recommended that consideration be given to reducing the timeframe to 2 years.

Similarly, QLS submitted that the period of time that a UIZ can be in place should be capped as there is no guarantee that the zoning of the land will change following the review. This raised concerns for the QLS especially in the absence of compensation claims for landowners.[72]

In response, the department acknowledged that it will give further consideration to this matter.

2.4.1.4 Potential impacts on housing supply

Several stakeholders suggested that the creation of a new zone could counter-intuitively undermine the Bill's goal of achieving more housing supply due to the lag time associated with progressing strategic planning through the legislative framework.[73]

For example, Property Council Australia (PCA) noted its concerned for the potential for this option to be used to delay or prevent the delivery of housing in emerging zones. The PCA submitted that the private sector has been responsible for bringing forward many major growth areas in recent times, including: Yarrabilba, Aura Upper Kedron, Springfield and Morayfield South, and that prohibiting development through the application of a UIZ could restrict the ability for the industry to progress new growth areas. The PCA stated if a proponent is willing to pursue a development proposal at its own cost, this should be facilitated, rather than prohibited'.[74]

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69 DSDILGP, correspondence, 8 November 2023, p 14. PIA, submission 10, p 6.

70 PIA, submission 10, p 6.

71 DSDILGP, correspondence, 8 November 2023, p 14. PIA, submission 10, p 6.

72 QLS, submission 24, p 5.

73 PIA, submission 10, p 7.

74 Property Council of Australia, submission 6, p 3.

The UDIA also expressed concern about greater delays in meeting critical housing need stating that any pause or rezoning to a UIZ will take an inordinate amount of time (as the average significant planning scheme change takes 3 or more years).

2.4.1.5 Operational impacts

The LGAQ, while welcoming the intent of what the zone was trying to achieve, was concerned that the operation of the zone will deliver limited value as it can only be applied following a 'major amendment' process which could exceed 3 years. The LGAG called for further consultation on this measure.[75]

The department also acknowledged that potential temporal impacts will need to be considered by the local government in proposed amendment to their local government planning scheme to include land in a UIZ. These impacts would also need to be considered by the Minister in assessing a planning scheme amendment.

As noted above, the department committed to working with the LGAQ and local governments to ensure the proposed zone is workable and that the process, timing and operations giving effect to the zone are worked through in detail to inform the preparation of supporting materials.

The department confirmed that the intent of the UIZ is to be a transitional zone to allow local governments to complete detailed planning of growth areas and to better manage growth and sequence development. While this planning change pauses development in the short-term, it helps local governments particularly in instances where the local government area has multiple growth fronts, by enabling local governments to focus on each growth front one by one to connect communities and development to the essential services they need, faster.

2.4.1.6 Restriction of compensation rights

QLS expressed concerns about the restriction on compensation rights which flow from establishing a UIZ as the creation of a UIZ will have the practical effect of depriving landowners of compensation when they are affected by the prohibition of development that is a material change of use of premises or reconfiguring a lot for an urban purpose.[76]

In response the department advised the limitation on compensation rights is intended to reflect the reinstating of rights, once detailed planning has occurred, as well as the requirement to notify landowners of proposed amendments, allowing for a formal submission process. The need for feasible alternatives assessment is to assist local government and the state to consider whether there are any other alternatives to the planning change and to ensure that there is no unreasonable social or economic impact on communities. Further, this zone is only intended to be a temporary change and therefore, only temporarily impacts landowners and stakeholders.

2.4.1.7 Potential for premature development applications

CoMSEQ acknowledged the introduction of an UIZ as a potential tool to assist councils in identifying and protecting future growth areas. However, noted that councils have raised concerns about the implementation process for a UIZ, particularly the lack of measures to prevent premature development applications. To address these challenges, CoMSEQ proposed that the government consider and consult with councils on exploring retrospective provisions to support the application of the UIZ.[77]

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75 LGAQ, submission 18, pp 13-14.

76 QLS, submission 24, p 4.

77 CoMSEQ, submission 17, pp 1-2.

2.4.2 Fundamental legislative principle - property rights

Under the provisions of the Bill, an adverse planning change will not include a planning change that is made to include land in the UIZ.[78] This could impact individuals' property rights.

The explanatory notes justify the exclusion of the right to compensation on the basis that it would not be an 'arbitrary' deprivation of a right, because the Minister must follow the process in the Minister's Guidelines and Rules that relates to the UIZ.[79] According to the explanatory notes:

> This process includes the ability for the landowner to be notified of and make a submission about the amendment to rezone land to urban investigation zone. It also requires a local government to consider all feasible alternative [sic] before deciding to establish an urban investigation zone and review its use of the urban investigation zone every five years.[80]

The explanatory notes do not directly address why compensation is not being offered to persons affected by the proposed UIZ planning change however, the statement of compatibility provides some reasoning:

> It is true the Bill does not provide for owners of land in a UIZ to be compensated. However, this is reasonable having regard to the fact that the landowners retain ownership and any temporary effect on land value resulting from development restrictions may ultimately be offset by increases in value flowing from the benefits of the land's location within a properly planned environment with good amenities and access to services and facilities.[81]

The committee sought further information on this aspect of the Bill from the department which advised:

> The limitation on compensation rights is intended to reflect the reinstatement of rights, once detailed planning has occurred, as well as the requirement to notify landowners of proposed amendments, allowing for a formal submission process. The need for assessment of the impacts of the planning change and any alternatives is necessary as it enables the State to consider if there are any other alternatives to the planning change and to ensure that there is no unreasonable social or economic impact on communities.
>
> Another consideration is that the landowners retain ownership and any temporary effect on land value resulting from development restrictions may ultimately be offset by increases in value flowing from the benefits of the land's location within a properly planned environment with good amenities and access to services and facilities.
>
> While the UIZ is temporarily in place on the land, a number of exemptions have been included in the regulation, including accepted development, development carried out under development approvals that are in effect and development carried out under a State facilitated application. The State facilitated application process (along with ShapingSEQ and other projects underway by government) is a direct response to National Cabinet's 'National Planning Reform Blueprint' which specifically identifies an action for a streamlined approval pathway including strengthened call in type powers. The new state facilitated application pathway is necessary to ensure Queensland continue to be competitive with other states for the $3 billion New Home Bonus funding from the Federal government.[82]

Committee comment

The committee is satisfied that the intent of the Urban Investigation Zone is reasonable and appropriate. It is a matter for individual local governments as to whether they wish to use the zone as a planning tool, however thorough consultation with the sector will be important to ensure that the

78 Bill, cl 63, amends Planning Act, s 30.

79 Explanatory notes, p 9.

80 Explanatory notes, p 9.

81 Statement of compatibility, p 18.

82 DSDILGP, correspondence, 18 November 2023, p 2.

measure works for all parties and we welcome the commitment by the department to undertake this work when finalising amendments to the Planning Regulation and supporting materials.

The committee agrees that a review period of 5 years is too lengthy. We recommend that further consideration be given to this timeframe and suggest that a shorter period of 2 years may be more appropriate.

We also considered this provision from a fundamental legislative principle perspective. Whilst the establishment of a UIZ may have a short term impact on some individual property rights (by limiting the use of property and excluding rights to compensation), we are satisfied that this is justified by the overall purpose of the UIZ provisions to adequately protect land from pre-emptive development.

Recommendation 4

That in relation to Urban Investigation Zones, the Government consider amending the Bill to reduce the review period from 5 years to 2 years.

2.5 Temporary accepted development

Clause 28 inserts a new framework that allows for a material change of use of a premises to be declared 'temporary accepted development' for a stated period, meaning that it will not require planning approval.[83]

At the end of the stated period the rights afforded under the declaration will cease and approved use will revert to what was in place prior to the declaration.[84] If there is a genuine ongoing need for the development further than the temporary use, under the relevant planning scheme, a person may apply for a development approval for the material change of use to the relevant local government while the declaration is in place to make the use permanent. The department advised that this enables the local government to further consider the local interests relevant to that specific development and premises.[85]

The measure is intended to provide a mechanism through which the government can respond to urgent and emerging issues to achieve positive community outcomes in a timely manner.[86] The provisions are not limited to residential uses.[87]

2.5.1 Stakeholder views

2.5.1.1 Support for measure

There was support for this measure from QLS and Q Shelter.[88]

2.5.1.2 Ensuring development is temporary in nature

Several submitters emphasised the importance of ensuring that development was genuinely temporary in nature. The LGAQ submitted that the risk that permanent uses (such as slab-on-ground homes) will be declared temporary accepted development and once the stated period expires the

83 Explanatory notes, p 22.

84 DSDILGP, Temporary accepted development, Fact sheet, p 1.

85 DSDILGP, correspondence, 8 November 2023, p 53.

86 DSDILGP, Temporary accepted development, Fact sheet, p 1. https://documents.parliament.qld.gov.au/com/SDRIC-F506/HAAPOLAB20-CAB2/Fact%20Sheet%20-%20Temporary%20Accepted%20Development%20.pdf

87 DSDILGP, correspondence, 8 November 2023, p 52.

88 QLS, submission 24, p 5;

development may become unlawful, and local governments may be forced to take compliance action.[89]

QLS submitted that it is important that the temporary nature of developments are clearly communicated to the public to avoid any confusion or misconceptions about their continued application.[90] In response, the department advised that the declarations will likely be identified on the department's website to assist with notifying the community.[91]

2.5.1.3 Defining urgent or emerging issues

Several inquiry participants sought further information on the definition of an urgent or emerging issue.[92] The department advised that the terms are intended to remain undefined to be flexible to the many different circumstances that could arise.[93]

Brisbane City Council suggested that a possible way to address this would be to limit temporary accepted development to a 'temporary use' as defined under the Planning Regulation given that a requirement to meet this definition is that the use does not involve the construction of, or significant changes to, permanent buildings or structures. [94]

Brisbane City Council also submitted that there may be pressure to regularise unsuitable uses, or uses with unsuitable impacts that would not have been approved or approved with conditions if a development application was made prior to a use commencing. This includes where temporary accepted development does not adequately consider interfaces with and impacts from existing lawful uses (such as residential temporary accepted development adjacent to an existing industrial use). [95]

The department confirmed that any use that is declared a temporary accepted development will require amendments to the Planning Regulation to describe the parameters of the use including any conditions that manage its impact on surrounding amenity and environment. Local governments will be notified when a declaration under the Planning Regulation has been made. Further guidance material will also be developed for local governments.[96]

2.5.1.4 Community consultation

Brisbane City Council also submitted that before declaring any temporary accepted development consultation should be required with the community and with local government as the introduction of a temporary accepted development could create uncertainty for local governments, developers and the community by allowing planning changes to occur with no prior notice or transition period.[97]

In response the department advised that temporary accepted development provides a mechanism through which the government can respond to urgent and emerging issues in a timely manner. As a result, the need for consultation will be evaluated on a case-by-case basis.[98]

2.5.1.5 More information

Some inquiry participants noted that it is difficult to anticipate the potential impacts on local government without further information. This includes how inappropriate and unacceptable impacts

89 LGAQ, submission 18, p 6.

90 QLS, submission 24, p 5.

91 DSDILGP, correspondence, 8 November 2023, p 52.

92 BCC, submission 5, Appendix A, p 6.

93 DSDILGP, correspondence, 8 November 2023, p 52.

94 BCC, submission 5, Appendix A, p 7.

95 BCC, submission 5, Appendix A, p 7.

96 DSDILGP, correspondence, 8 November 2023, p 52.

97 BCC, submission 5, Appendix A, p 7.

98 DSDILGP, correspondence, 8 November 2023, p52.

would be managed and the additional compliance and regulatory burden likely to be experienced by local governments.[99]

Committee comment

The committee is satisfied that amendments relating to temporary accepted development are reasonable and appropriate. The committee acknowledges requests from inquiry participants for further information on uses that may be declared temporary accepted development.

As noted above, it is important that further consultation be undertaken with the sector and appropriate guidelines developed for councils to ensure that parameters are well understood.

2.6 Power of Minister to direct action be taken

Clauses 93 to 95 of the Bill enable the Planning Minister to direct a local government to amend its planning scheme without first giving notice.[100]

The Minister currently has powers under the Planning Act to direct a local government to amend a local planning instrument to be consistent with the regulated requirements or to protect or give effect to a matter of state interest. The Bill adds to this power by enabling the Minister to direct a local government, without first giving notice, to reflect matters in the Planning Regulation, which must be consistent with matters of state interest and which must have undergone adequate public consultation. Local governments must then make an amendment under the Minister's Guidelines and Rules.[101]

The department confirmed that the Minister's Guidelines and Rules (MGR) will be amended to simplify the process for a local government to amend a local planning scheme.

The department also confirmed that the powers are not intended to be used widely but rather as a last resort after the state has worked collaboratively with the local government. [102] Furthermore, as the Planning Regulation already overrides a planning scheme, removing the notice requirement enables an amendment to occur in a more timely and logical way.[103]

2.6.1 Stakeholder views

2.6.1.1 Support

Q Shelter, PIA, OSCAR, UDIA expressed their support for the provisions.[104]

By way of example, the UDIA submitted that the provision will allow the planning framework to more effectively reflect changing circumstances or changes to state planning instruments (for example, South East Queensland Regional Plan or State Planning Policy).[105] The PIA also outlined support for the measure, emphasising that the powers should be used infrequently.[106]

2.6.1.2 Ministerial direction already exists

Conversely, several inquiry participants, primarily from the local government sector, did not support the provision.

99 BCC, submission 5, Appendix A, p 7.

100 Explanatory notes, pp 49 -50.

101 DSDILGP, Minister's Direction Power, Fact Sheet, p 1.

102 DSDILGP, Minister's Direction Power, Fact Sheet, p 1.

103 DSDILGP, Minister's Direction Power, Fact Sheet, p 1.

104 See submissions:

105 UDIA, submission 19, p 4.

106 PIA, submission 10, p 8.

The LGAQ submitted that sufficient Ministerial power already exists and that it is unclear how the new powers will operate.[107]

The LGAQ also advised the committee that under the Queensland planning framework, local governments are best placed to consider how to apply state interests in their local area, given their unique local knowledge and context. [108] Furthermore, the LGAQ added that the amendment could erode trust in the planning system and recommended that alterations are made to clarify local government's ability to locally refine state interests.[109]

The City of Gold Coast also recommended that the Bill be amended to enable local governments to locally refine State interests.[110]

2.6.1.3 More information on process required

CoMSEQ called for further information to ensure local governments understand how the community would be appropriately engaged on key decisions which have community impacts.

Brisbane City Council was also concerned that 'adequate consultation' is not defined outside of an example provided in the 'Ministers Direction Powers' factsheet, which states that these are where there has been 'community level consultation where it is clear what an amendment to the planning scheme would be and how the community would be affected'.[111]

Noosa Council was concerned about the nature of the powers and whether they could be used in relation to height and density.[112]

In response the department advised that for the Minister to be satisfied that *adequate consultation* has been undertaken, consideration would be given to the extent of consultation with the local community and the level of detail provided in that consultation. Furthermore, it is the intent that matters of state interest will need to be able to be contextualised at a local level to ensure there is clear direction to local government on the amendment to the planning scheme required. The department will provide clarification on what constitutes adequate consultation through guidance material.[113]

Committee comment

The committee is satisfied that the measure is appropriate.

The committee acknowledges the calls for inquiry participants for further information on the process and definitions of adequate consultation. It will be important for the department to take steps to consult with stakeholders and publish guidance material on this matter in a collaborative way.

The committee also notes that the measure is not intended to be used widely but as a last resort after the state has worked collaboratively with the local government.

2.7 Public notice requirements and documents and making submissions

The Bill seeks to modernise 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

107 LGAQ, submission 18, p 17.

108 LGAQ, submission 18, p 17.

109 LGAQ, submission 18, p 17.

110 City of Gold Coast, submission 20.

111 BCC, submission 5, Appendix A, p 6.

112 Noosa Council, submission 12, p 2.

113 DSDILGP, correspondence, 8 November 2023, p 60.

requiring the submission to be signed by each party making the submission; and ensuring documents are publicly accessible during a public health emergency or disaster situation.[114]

2.7.1 Stakeholder views

There was broad support for the amendments from a range of inquiry participants.[115]

QLS suggested that the amendment could result in inconsistent approaches amongst local governments, and recommended that local governments be required to place public information on their websites, while preserving the power for individual local governments to determine additional methods of publication.[116]

In response, the department advised that the change aligns with changes to the *Financial Accountability Act 2009* which override Planning Act requirements. Further, the change allows local governments to publish in a way that reaches interested or affected parties and does not limit other forms of consultation methods such as placing notices on websites.[117]

2.8 Applicable events and temporary use licences

The applicable event and temporary use licence framework was introduced in response to the COVID-19 pandemic to ensure that the planning framework can respond to events or disasters, such as floods, cyclones, bushfires or a public health crisis.

The Bill seeks to improve the functionality of the framework by enabling 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 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).[118]

The Bill provides for consultation in relation to TUL applications and allows for TULs to be amended, extended, suspended or cancelled. Similar amendments are made to the Economic Development Act 2012 to ensure these process improvements apply across planning legislation.

The measure is intended to 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.

2.8.1 Stakeholder views

There was some support for the amendment.[119]

Brisbane City Council requested that proposed s171FA be amended to allow for local governments to be consulted prior to a licence being granted and suggested that further clarity on whom, and if, Minister for Economic Development Queensland (MEDQ) considers appropriate as to consultation.[120]

In response, the department confirmed that the chief executive may consult with any entity considered appropriate. The intent of the amendment is to provide the MEDQ to consult with any

114 Explanatory notes, p 5.

115 OSCAR, QShelter, PIA, QLS, Urban Utilities, Bundaberg Regional Council.

116 QLS, submission 24, p 7.

117 DSDILGP, correspondence,

118 Explanatory notes, p 5.

119 Bundaberg Regional Council, OSCAR and QLS.

120 BCC, submission 5, Appendix A, p 1.

person that is considered necessary on a case-by-case basis and that this could include affected stakeholders such as property owners, industry or a local government.[121]

2.8.2 Fundamental legislative principle – natural justice and administrative power

As the provisions provide for the extension, amendment, cancellation or suspension of a licence by the chief executive or the MEDQ, issues of natural justice and administrative power are raised as it does not appear that these decisions are subject to review under the Bill's provisions (for example, review of a decision to refuse to an extension application, or review of a decision to cancel or suspend a licence).

The explanatory notes do not provide detailed justifications for this potential inconsistency with fundamental legislative principles, but note that there are specific grounds that must be met before the chief executive or the MEDQ may amend, suspend or cancel temporary use licences[122] and that the Bill includes a show cause process:

> … which provides the impacted holder of the license with natural justice by providing them with the opportunity to make a submission to the chief executive to show why the proposed action to amend, cancel or suspend the temporary use licence should not be taken. The chief executive must consider any submission made and decide what action to take and provide a notice of the chief executive's decision to the license holder.[123]

Further, the explanatory notes highlight that the amendments provide greater flexibility to respond to the applicable event as it evolves and provide the chief executive with the power to respond to issues or concerns with licences once they are approved, overall leading to more efficiency for future events.[124]

Committee comment

The committee is satisfied that amendments relating to applicable events and temporary licences are reasonable and appropriate.

The committee is satisfied that the potential inconsistency with fundamental legislative principles in these circumstances is justified by the overall purpose of the temporary use licence framework as a streamlined and time-limited process to deal with applicable events.

2.9 Changes to Infrastructure Charges Notices

The Bill allows 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 withdrawal. This allows sufficient time for the recipient to appeal during the appeal period if the recipient does not suspend the appeal period.[125]

The intent of the amendment is to correct an anomaly and allow sufficient time for the recipient to appeal during the appeal period in all circumstances.[126]

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121 Explanatory notes, p 5.

122 Explanatory notes, 14.

123 Explanatory notes, p 14.

124 Explanatory notes, p 5.

125 Explanatory notes, p 6.

126 DSDILGP, correspondence,18 November 2023, p 61.

2.9.1 Stakeholder views

Several inquiry participants outlined their support for the amendment.[127]

Redland City Council suggested that the retrospective suspension of the appeal period could have unintended consequence of recipients submitting frivolous grounds simply to have the option of extending the 20-day appeal period.[128] In response, the department advised that under the framework, recipients of an Infrastructure charges notice can provide a notice to suspend the appeal period which affords the recipient an additional 20 business days. This means that recipients do not need to submit frivolous grounds simply to extend the 20-day appeal period.[129]

Committee comment

The committee is satisfied that amendments relating to changes to infrastructure charges notices are reasonable and appropriate.

2.10 Dual listed heritage places

The Bill prescribes 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 (i.e. a dual listed heritage place).

The explanatory notes state that this 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.[130]

2.10.1 Stakeholder views

The LGAQ submitted that while the intent to remove duplicative assessments is appreciated in principle, the drafting of the Bill in its current form could have broader implications in circumstances where local heritage values differ from state heritage values and local governments will be unable to protect their local heritage values.

For example, in cases where the state considers a building to have heritage value, while a local government considers the building *and its grounds* to have heritage value. As such, State heritage protections may allow for subdivision and redevelopment of the grounds, whereas local heritage protections may not. [131]

The LGAQ recommended that the Bill be amended to ensure assessment benchmarks can be established to protect local heritage values and curtilage where they differ from state heritage values.[132]

Committee comment

The committee is satisfied that amendments relating to dual listed heritage places are reasonable and appropriate but request that the Minister clarify in the second reading speech whether amendments relating to dual listed heritage places sufficiently protect local heritage values.

127 OSACA, UDIA, Bundaberg Regional Council.

128 Redland City Council.

129 DSDILGP, correspondence, 18 November 2023, p 61.

130 Explanatory notes, p 5.

131 LGAQ, submission 18, p 18.

132 LGAQ, submission 18, p 19.

Recommendation 5

That in relation to dual listed heritage places, the Minister clarify in the second reading speech whether amendments sufficiently protect local heritage values.

2.11 Development Control Plans

Development Control Plans (DPCs) were created in 1990 to manage larger scale developments and have been maintained through a series of transitional provisions in successive Queensland Planning Legislation.[133] There are currently 3 DCPs in effect across Queensland:

- Springfield Structure Plan in the Ipswich City Council area
- Mango Hill Infrastructure Development Control Plan in the Moreton Bay City Council area
- Kawana Waters Development Control Plan 1 in the Sunshine Coast Regional Council area.[134]

In 2022, the Planning and Environment Court in its Northlakes decision[135] found that development assessment in DCPs must be made, assessed and decided using the Integrated Development Assessment System created under the repealed *Integrated Planning Act 1997* (IPA). [136]

According to the explanatory notes, the judgment raises risks to previous approvals, potentially affecting housing developments. It also applies an outdated assessment and decision process that is unfamiliar, complicated and not as intended under the Planning Act.[137]

Accordingly, the Bill seeks to validate previously granted development approvals in DCP areas and modernise the assessment framework by validating development approvals given in DCP areas since the repeal of the IPA; applying the development assessment process under the Planning Act to development in a DPC area; and retaining the role of a DCP in categorising development and assessment, and setting assessment benchmarks.[138]

2.11.1 Stakeholder views

2.11.1.1Support

The amendments were supported by inquiry participants.[139]

QLS welcomed the changes noting that the Northlakes decision gave rise to significant uncertainty.[140] However, regarding the introduction of new application requirements for DCPs in regulation, QLS suggested that this could potentially affect existing land development rights and cautioned that this could give risk to an unfair outcome. QLS recommended that in drafting the regulation, it is crucial to avoid adversely affecting any existing rights with the application of local planning instruments and Schedule 10 of the Planning Regulation.[141]

The Property Council of Australia noted the statement in the explanatory notes (p.7) that 'other state interests are considered at the development assessment stage', and expressed concerns that this

133 Explanatory notes, p 2.

134 DSDILGP, Development Control Plans, Fact sheet, p 1.

135 *JH Northlakes Pty Ltd v Moreton Bay Regional Council* [2022] QPEC.

136 DSDILGP, Development Control Plans, Fact sheet, p 1.

137 Explanatory notes, p 2.

138 Explanatory notes, p 7.

139 PC, QLS.

140 QLS, submission 24, p 5.

141 QLS, submission 24, p 6.

statement implies that current or new state interests will be applied to applications under these existing DCPs.[142]

2.11.1.2Further detail to be included in regulation

The relationship between a DCP and the Planning Regulation 2017 (Planning Regulation), and a DCP and a local planning instrument, will be the subject matter of a regulation, the details of which are not yet known. The PCA called for further consultation on the regulations to ensure that rights under the existing DCP are preserved. *[143]*

The Springfield City Group (SCG) noted that the proposed regulation making power is very broad and that requiring applicants to refer to the Planning Regulation as well as (in the case of the SSP) the SSP, the Ipswich planning scheme, the Planning Act (Chapter 7 Part 4C, these transitional provisions) and the Planning Regulation will make it almost impossible to ensure full compliance. In SCG's view it would be more efficient for the matters discussed in this submission to be resolved by legislation.[144]

In response, the department advised that the three existing DCPs each categorise development in different ways and use different terms. The department noted that it has considered these differences in detail, and the Planning Regulation will set out how these matters are articulated in development assessment. If the Bill is passed, further consultation will take place as part of the Regulation amendment process.[145]

2.11.1.3Applications made but not yet approved

The Queensland Law Society identified a potential issue regarding applications made but not yet approved:

> The bill introduces changes to validate past approvals in development control plan areas as a result of the Planning and Environment Court decision in JH Northlakes Pty Ltd. The bill also clarifies that after the date of commencement any new applications for development approval in a DCP area will be assessed under the Planning Act 2016 and not under the repealed legislation, so the bill therefore deals with approvals that were given before the commencement of this legislation and it deals with any new applications made after the commencement. However, it appears that the bill does not deal with any applications which are made but not yet approved before the commencement of the amendments. We believe that this gap is not the intended policy outcome. If an applicant is concerned by this outcome, then in theory the applicant could withdraw the application and relodge after commencement, but we suggest that this would be time-intensive and costly. It may also trigger a new application fee. If this is not the intent then we recommend that this gap be considered and addressed before the bill is passed.[146]

The committee sought further information from the department on this matter. In response, the department advised that the approach to validating development applications made but not yet decided in DCP areas has been considered in detail during the drafting of the Bill. As identified in the Explanatory Notes and other supporting material for the Bill, the need to validate past development approvals in DCP areas was precipitated by the Planning and Environment Court's judgment in JH Northlakes Pty Ltd v Moreton Bay Regional Council [2022] QPEC 18. This judgment found that all development applications in DCP areas should have been made, assessed and decided under the provisions of the repealed Integrated Planning Act 1997, which was contrary to the department and community's understanding.[147]

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142 Property Council of Australia, submission 6, p 4.

143 Property Council of Australia, submission 6, p 4.

144 SCG, submission 30, p 3.

145 DSDILGP, Correspondence, 17 November 2023, p 11.

146 QLS, Transcript, 9 November 2023, p 11.

147 DSDILGP, Correspondence, 17 November 2023, p 1.

The department advised that it had carefully reviewed the nature of development applications and development approvals in determining its position and that in its view, it did not consider there to be a gap:

> Prospectively validating applications in assessment is not possible as these applications do not have the rights of a development approval. There is no guarantee these applications would receive approval and validating them could have unintended consequences. Validating applications in assessment might inadvertently validate a development application that was not correctly undertaken. Accordingly, the validation provisions were limited to past approvals. Further if a development application was made in accordance with the Court's judgement in the Northlakes decision and has not yet been decided by the time of the Bill's passage, it does not require validation as it followed the process identified by the Court and will be a valid approval upon decision. If an application was made in a manner contrary to the Court's judgement, it would be invalid, and would need to be remade, either using the process determined by the Court judgement or under the Planning Act if the Bill is passed. As such there is not a provision in the Bill that addresses applications made but not yet approved before the commencement of the amendments. The department acknowledges there may be some confusion over this matter. The department's position is there is no gap in relation to these applications.[148]

2.11.1.4 Does the Bill go far enough?

SCG welcomed the changes made by the Bill to confirm the validity of certain approvals granted in DCP areas and to clarify the processes to be used in assessing applications for development. However, suggested that the Bill does not go far enough, noting difficulties that arise given that development in the SSP areas usually requires both an SSP approval, and a development approval under the Planning Act. [149]

SCG outlined two possible solutions:

- Ensure any State referral occurs earlier in the master planning process, to remove the possibility of duplication, or
- Exempt development in a DCP area either from the referral triggers contained in the Planning Regulation 2017 (Qld) (Planning Regulation) so there would be no State assessment at the development approval stage, or exempt development in a DCP area from assessment under the Planning Act generally.[150]

In response the department advised that if the Bill is passed, amendments to the Planning Regulation will be required to clarify the relationship between the DCP, a local planning scheme and the Planning Regulation to ensure the proper process is clear.[151]

The department also advised that it has previously considered these matters as part of the drafting process and in response to previous representations from SCG. The level of detail available through the master planning process is not sufficient to be considered at development assessment stage, which is required to provide certainty that state interests are appropriately balanced. By moving development assessment in DCP areas under the Planning Act, the requirement for appropriate consideration of state interests in DCP areas will continue through referral to and assessment by the State through the State Assessment and Referral Agency (SARA).[152]

Committee comment

[148] DSDILGP, correspondence, 17 November 2023, p 1.

[149] SCG, submission 30, p2.

[150] SCG, submission 30, p2.

[151] DSDILGP, Correspondence, 17 November 2023, p 11.

[152] DSDILGP, Correspondence, 17 November 2023, p 11.

The committee is satisfied that provisions relating to the Development Control Plans are reasonable and appropriate. The committee notes the department's undertaking to clarify relationship between the DCP, a local planning scheme and the Planning Regulation to ensure the proper process is clear.

2.12 Urban encroachment

Urban encroachment protections allow local governments to plan for increasing urban density, while protecting existing industries. Where an activity is operating within previously approved limits, an owner can apply to the Planning Minister for an urban encroachment registration. This protects the registered premises from others launching legal action for nuisance relating to air, light or noise emissions for a period of up to 10 years, after which the registered premises is required to renew the registration if continued protection is required.[153]

The protections were introduced to enable changes to be made through local planning schemes to increase densities within existing urban areas, while balancing the needs of existing key employment generating or hard to locate uses.[154]

Clauses 77 to 92 of the Bill amend and seek to modernise the existing urban encroachment framework and follows feedback from industry that that the re-registration process creates an unnecessary burden, outweighing the benefit the provisions provide.[155] The Bill:

- creates a new change registration application process where an existing affected area is modified or expanded, in which consultation only occurs with persons in the expanded area
- simplifies the renewal process so that public consultation is not required when there is an impending lapse in registration and there is no change to the affected area, given consultation occurred when the premises was first registered
- removes the requirement to re-register where a premises obtains a new or amended environmental authority and/or development approval, where the affected area is unchanged and the owner gives notice to the affected area and Planning Minister and establishes requirements for public consultation, including a minimum 15 business day consultation period.[156]

2.12.1 Stakeholder views

2.12.1.1Consultation

QLS generally supported the measures however recommended that public consultation be prescribed for the circumstances relating to new or amended authority for registered premises and any re-registration application which involves an increase in allowable impact levels for premises but where the new development application or environmental authority (EA) did not undergo public consultation.[157]

OSCAR also recommended further public consultation be considered, suggesting that the minimum public consultation period for new or changed urban encroachment registrations should be the same as the minimum public consultation period for impact assessable applications.

The department acknowledged these recommendations noting that the timeframe for public consultation for urban encroachment applications aligns with development application minimum

153 DSDILGP, Urban Encroachment, Fact Sheet, p 1. https://documents.parliament.qld.gov.au/com/SDRIC-F506/HAAPOLAB20-CAB2/Fact%20Sheet%20-%20Urban%20Encroachment%20.pdf

154 Explanatory notes, p 2.

155 Explanatory notes, p 3.

156 DSDILGP, Urban Encroachment, Fact Sheet, p 1.

157 QLS, submission 24, pp 7-8.

public consultation periods in the Planning Act. The department also confirmed that the Bill establishes that notice of certain applications must be provided to owners and occupiers that may be affected by the registration or expanded area further that the notice must be published in a relevant online newspaper.[158]

The department also noted that planning and environmental frameworks will have already considered the potential impacts and issued approvals and that these are the appropriate legislative frameworks for assessing use and emission impacts and for determining the assessment pathway, including public consultation requirements.[159]

2.12.1.2Aligning registration amendment with new development permit process

OSCAR also recommended that the registration amendment process be run parallel with the impact application for the new development permit. In response, the department advised that it will consider this recommendation in determining if further amendments are required.[160]

2.12.2 Human rights – various

As noted above, the amendments would remove the requirement for public consultation with registration renewals or re-registration decision are also removed. Consultation is only required if the affected area is expanded, in which cases persons in the expanded area must be consulted. These provisions could impact on rights to freedom of expression and equality before the law by limiting opportunities for affected persons to contribute to or raise concerns about such decisions or to access legal remedies if their rights are affected.

Furthermore, because of the nature of the industries which are the subject of these provisions (for example, those that might create nuisances based on air, light or noise pollution) there is also potential limitations to the right to property, the rights to enjoy privacy, family and home life and even the right to life should impacts be very severe.

Committee comment

The committee has considered the views of stakeholders and potential limitations to human rights associated with the provisions which amend the existing urban encroachment provisions.

The committee is satisfied that the provisions are reasonable and appropriate and have been sufficiently justified from a human rights perspective. Central to the committee's consideration was that provisions will only be applied where activities have already been approved through the Planning Act or the *Environmental Protection Act 1994*.

158 DSDILGP, correspondence, 8 November 2023, p 48.

159 DSDILGP, correspondence, 8 November 2023, p 48.

160 DSDILGP, correspondence, 8 November 2023, p 48.

Appendix A – Submitters

Sub #	Submitter
1	Rhys Bosley
2	Real Estate Institute of Queensland
3	Bill Giles
4	Queensland Council of Social Service (QCOSS)
5	Brisbane City Council
6	Property Council of Australia
7	Q Shelter
8	South East Queensland Community Alliance (SEQCA)
9	Phil Heywood
10	Planning Institute of Australia (PIA)
11	Walker Corporation
12	Noosa Council
13	Sustainable Population Australia - Queensland Branch
14	Redland City Council
15	Confidential
16	Bundaberg Regional Council
17	Council of Mayors (SEQ) Pty Ltd
18	Local Government Association of Queensland (LGAQ)
19	Urban Development Institute of Australia Queensland
20	Council of the City of Gold Coast
21	Brisbane Residents United
22	Ipswich City Council
23	Organisation Sunshine Coast Association of Residents (OSCAR)
24	Queensland Law Society
25	Greater Whitsunday Communities, Regional Development Australia
26	Gecko Environment Council
27	Urban Utilities
28	Aboriginal and Torres Strait Islander Legal Service
29	Australian Institute of Architects - Queensland Chapter
30	Springfield City Group
31	Isaac Regional Council

Appendix B – Officials at public departmental briefing

23 October 2023

Department of State Development, Infrastructure, Local Government and Planning

- Christopher Aston, Executive Director, Policy and Statutory Planning, Planning Group
- Kate Wall, Director, Strategic Policy and Legislation, Policy and Statutory Planning, Planning Group
- Danae Austin, Manager, Strategic Policy and Legislation, Policy and Statutory Planning, Planning Group

Appendix C – Witnesses at public hearing

23 October 2023

Urban Development Institute of Australia

- Kirsty Chessher-Brown, Chief Executive Officer
- Sarah Macoun, Director

Planning Institute of Australia

- Nicole Bennetts, State Manager – Queensland and Northern Territory
- Stafford Hopewell, PIA Qld Policy and Advocacy Committee Member

Real Estate Institute of Queensland (REIQ)

- Dean Milton, Chief Operating Officer

9 November 2023

Local Government Association of Queensland (LGAQ)

- Sarah Vogler, Head of Advocacy
- Crystal Baker, Manager, Strategic Policy Advocate
- Matthew Leman, Lead, Planning and Development Policy Advocate

Council of Mayors (South East Queensland)

- Scott Smith, Chief Executive Officer
- Matthew Hendry, Advocacy and Engagement Manager

Ipswich City Council (via video conference)

- Brett Davey, General Manager, Planning and Regulatory Services
- Garath Wilson, Strategic Planning Manager
- Dannielle Owen, Principal Policy Lead - New Ipswich Planning Scheme

Queensland Law Society

- Wendy Devine, Principal Policy Solicitor
- Michael Connor, Chair, QLS Planning and Environment Law Committee
- Troy Webb, Member, QLS Planning and Environment Law Committee

Queensland Council of Social Service (QCOSS)

- Ryan O'Leary, Manager - Community Engagement

QShelter (via videoconference)

- Jackson Hills, Manager- Policy & Strategic Engagement

Australian Institute of Architects

- Amy Degenhart, Queensland Chapter President
- Paul Zanatta, National Advocacy and Policy Manager (via VC/Teleconference)
- Dr Anna Svensdotter, State Manager Queensland

SEQ Community Alliance

- Chris Walker, President
- Dr Philippa England, General Member

Brisbane Residents United

- Elizabeth Handley, President

Organisation Sunshine Coast Association of Residents

- Melva Hobson, President

Kurilpa Futures

- Ad.A/Prof Philip Heywood, Visiting Ass. Prof. in Community Planning, QUT

Statement of Reservation

Statement of Reservation by Opposition Members Jim McDonald MP and Michael Hart MP

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

1. Introduction

The LNP members of the committee have concerns across the areas including the lack of consultation and confidentiality agreements, housing solutions and diversity of product, new ministerial powers, the new urban investigation zone, alignment with other Planning instruments and lack of consistency with the South East Queensland Regional Plans and State and Local Government Heritage protections. Together with other stakeholders, we believe that this Bill will not produce improvements in availability of housing or the affordability of housing in Queensland and lead to state facilitated development that isn't necessarily to the states interest but instead to a political or developers interest.

2. Consultation

Submitters criticised the consultation process for the development of the Bill. The committee heard that some of the proposals in the Bill were 'rushed' and that 'the bill has been developed with limited consultation with local government'.[161]

Key stakeholders like LGAQ and the Council of Mayors South East Queensland told the committee that there were a number of new proposals in this Bill that they were not consulted on before the Bill was introduced, and that there was no consultation on the detail of two key mechanisms in this Bill - the Urban Investigation Zone (UIZ) and the state facilitated development pathway.[162] LGAQ said that the Bill 'has some links' to previous consultation, 'but certainly the tools that have been put forward are very different in their form'.[163]

These stakeholders also told the committee that while they had been working with the department through the Growth Areas Advisory Committee over the last couple of years, they have been constrained by much of that consultation being confidential, particularly in the last year, and that being bound by confidentiality meant they were unable to consult with their own executive and council members to gain a share view of their organisation and/or council.[164]

The LGAQ submitted:

> *The LGAQ has previously raised concerns with the quantum, scale and pace of amendments being made to the planning framework by the State Government, particularly since late 2022. These changes are occurring at a speed which does not allow adequate, genuine or meaningful consultation with local government, industry and the community, consideration of impacts or unintended consequences, or review and evaluation post-implementation to assess the effectiveness or otherwise of these measures.*
>
> *The introduction of the Bill to further amend the planning framework is yet another example of rushed regulatory amendments that have not undergone a rigorous regulatory impact analysis through a Consultation Impact Analysis Statement. It is also acknowledged that the Bill relies*

[161] LGAQ, public hearing transcript, pp 9, 2.

[162] Public hearing transcript, p 4.

[163] Public hearing transcript, p 4.

[164] Public hearing transcript, p 4.

heavily on subordinate legislation to provide clarity and operationalise the powers established by the Bill.[165]

3. Housing solutions and diversity of product

Submitters expressed concern that planning measures proposed in the Bill will not provide a solution to the need for more affordable housing supply and diversity of housing products. Many referred to the availability of 97000 lots and 121000 units being available but only 10% of product converting to market.

The Council of Mayors South East Queensland said:

Housing supply, diversity and affordability requires evidence-based solutions, and it is important to avoid knee jerk reactions which undermine State, regional and local government planning policies. While there is an immediate need to unlock more housing, it is important to ensure we avoid knee-jerk responses which undermine the integrity and intent of existing State, regional and local government planning policy.[166]

The LGAQ also explained:

…planning can only facilitate development. For example, according to the latest statistics, right now there are more than 97,000 lots within active approvals that have not yet been developed across Queensland and, similarly, in South-East Queensland alone there are more than 94,000 approved multiple dwellings that are also yet to be constructed. These are approved projects that are not being held up by any planning or local government processes but, indeed, by other forces.[167]

Similarly Kurilpa Futures submitted that relying on 'short term expedients to progress the planning and construction of housing … would be a large step backwards towards the abandonment of integrated planning for well serviced and suitably located communities'.[168]

A possible solution suggested by the Australian Institute of Architects relates to streamlining planning for smaller homes:

The demographic that needs housing is the one- to two-person household, possibly at most three. In terms of the housing demographic, it is very difficult to create houses that are less than four bedrooms in the current economic scenario. Pointing to the 97,000 lots that are not being developed, most of that is quite possibly because they need to be larger homes. Now that the economics have changed so significantly, those homes would be well above the reach of what the typical market would be.

One of the solutions that the institute is advocating is to create smaller dwellings, in infill situations in particular. … our research is that traffic, car parking and design are the three things that communities are most concerned about when infill or changes to their neighbourhood in terms of new housing are introduced. Architects are particularly capable of addressing those design solutions within the context of an existing neighbourhood so that those changes are actually seen as welcomed refreshments and also create the opportunity for a demographic where the existing community cannot only house their growing children and their children as they progress into adulthood but also for ageing in place.[169]

[165] Submission 18, p 9.

[166] Submission 17, p 1.

[167] Public hearing transcript, p 2.

[168] Submission 9, p 3.

[169] Public hearing transcript, p 21.

4. Ministerial Powers and State facilitated development.

The committee heard repeatedly that the additional Ministerial Powers provided by the state facilitated application process and ability to override planning decisions - were not needed as these powers already exist.

For example, the Queensland Law Society stated:

> *I think that power already exists. If you think about a call-in power which exists in the Planning Act—so a council refuses a development application, or approves it for that matter, and the minister has the power to call it in*.[170]

The LGAQ was also concerned,

> *The lack of essential clarity and transparency is not limited to State priorities and State facilitated applications. It is also unclear how the proposed Ministerial powers to direct amendments to planning schemes will operate, and how necessary these powers are –*
>
> *The LGAQ recommends that Ministerial powers to direct amendments to planning schemes not be supported, noting that extensive and sufficient existing Ministerial direction powers already exist.*[171]

The LGAQ recommendation from their submission;

> *Due to our substantial and material concerns, the LGAQ cannot support the Bill in its current form, and requests that it be re-drafted in genuine consultation with local governments. As the peak body for all of Queensland's 77 councils, our approach is always to be solutions-oriented and to offer constructive policy proposals.*

The LNP also believes that the additional call-in powers extend the reasons of the Ministers Powers from current State Planning Policy and therefor State Interest matters with proper compensation for those affected to any matter that the Minister considers important and with limited compensation opportunities for land holders affected. This power together with the lack of consultation supports the LGAQ concerns regarding the Bill in its current form and the activation of state facilitated development outside long term well understood local government processes.

5. The Urban Investigation Zone is unworkable

Of primary concern to the LGAQ was the impracticality and unworkability of the Urban Investigation Zone (UIZ):

> *As the bill is currently drafted, we are concerned, and local governments have raised concerns with us, that the utility and application and the workability of that zone and the effectiveness, therefore, may not actually deliver the intended outcome.*

(a) One of the examples is certainly about the way the process sits behind the UIZ, whereby a local government must undertake a major planning scheme amendment with a feasible alternatives report to be prepared in order to get an urban investigation zone into a planning scheme and the time that it takes to progress that. Then, in order to remove it within a five-year time period, you would also have to go through a planning scheme amendment process, which has considerable time, cost and resource impact for local government to do. I guess the streamlining of that process is critical.[172]

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170 Public Transcript, 9 November 2023, p 13.

171 LGAQ, submission, p 17.

172 Public Transcript, 9 November 2023, p 4.

Councils were also worried that the process could actually result in pre-emptive lodgement of development applications:

(b) *Something that has also been raised as a concern is around the pre-emptive lodgement of development applications for example, particularly if the urban footprint is expanded and switched on and the local government planning schemes are not yet calibrated, in addition to the resource impost. There is that concern. I think this is common feedback from us across all of the mechanisms: we think there are existing tools in the toolbox of the Queensland planning system that could be better utilised.*[173]

(c)

6. Alignment with other Planning instruments and consultation – what about the South East Queensland Regional Plans?

Planning, by its nature is complex and dynamic nature. The State wants local governments to do growth management strategy, local area plans and local government infrastructure plans, yet these can be an impediment to seeing increases in land supply in the SEQ regional plans and certain developments. The Bill does not address this!

7. State and Local Government dual listed Heritage protections

The LGAQ submission advised that with regards to the operation of the Bill, local governments raised concerns regarding how dual listed heritage places will be considered. At present, the Bill seeks to prescribe that a local categorising instrument may not include assessment benchmarks for a Local heritage place that is also considered a Queensland heritage place.

This is said to remove 'duplication' of assessment. Whilst the intent to remove duplicative assessments is understood and appreciated in-principal, the current drafting will have much broader implications. I.e., in circumstances where local heritage values differ from State heritage values (and therefore do not duplicate) the current drafting will prohibit local governments from protecting their local heritage values. For example, while the State may not consider a building to have heritage value, a local government may consider the building and its grounds to have heritage value. As such, State heritage protections may allow for subdivision and redevelopment of the grounds, whereas local heritage protections may not.

If the State's intention is to remove 'duplication' of assessment, this should be reflected in drafting - rather than broader prohibitions which limit local governments' ability to protect local heritage values.

There is little evidence from the inquiry that this Bill will assist the current issues of Housing Availability and Affordability and the LNP believes this Bill is an attempt to shift the blame from the State Labor Government to local government and give the state the power to over-ride well established and trusted planning practices of local government.

Mr Jim McDonald MP
Deputy Chair
Member for Lockyer

Mr Michael Hart MP
Member for Burleigh

[173] Public Transcript, 9 November 2023, pp 4-5.