



Planning (Inclusionary Zoning Strategy) Amendment Bill 2023

Report No. 46, 57th Parliament
State Development and Regional Industries Committee
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State Development and Regional Industries Committee

Chair	Mr Chris Whiting MP, Member for Bancroft
Deputy Chair	Mr Jim McDonald MP, Member for Lockyer
Members	Mr Michael Hart MP, Member for Burleigh Mr Robbie Katter MP, Member for Traeger Mr Jim Madden MP, Member for Ipswich West Mr Tom Smith MP, Member for Bundaberg

Committee Secretariat

Telephone	+61 7 3553 6662
Email	sdric@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/SDRIC

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

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Chair's foreword

This report presents a summary of the State Development and Regional Industries Committee's examination of the Planning (Inclusionary Zoning Strategy) Amendment Bill 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider 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 committee found the Bill to be deeply flawed in regards to impact on housing supply. It also contained a range of unintended consequences and represented a substantial breach of fundamental legislative principles by compromising the rights and liberties of individuals.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff, Dr Amy MacMahon, the Member for South Brisbane, and the Department of State Development, Infrastructure, Local Government and Planning.

I commend this report to the House.

A handwritten signature in black ink, reading 'C. Whiting', written in a cursive style.

Chris Whiting MP

Chair

Recommendations

Recommendation 1	6
The committee recommends the Planning (Inclusionary Zoning Strategy) Amendment Bill 2023 not be passed.	6

Executive summary

About the Bill

The Planning (Inclusionary Zoning Strategy) Bill 2023 (Bill) was introduced into the Legislative Assembly by Dr Amy MacMahon, Member for South Brisbane, on 19 April 2023 and referred to the State Development and Regional Industries Committee (committee) for consideration.

The Bill proposes to amend the *Planning Act 2016* to include a requirement that the ‘Minister must, within 2 months after the relevant date, introduce a Bill in the Legislative Assembly that achieves’ certain objectives outlined in the Bill. These objectives amongst other things, include requiring all new developments (residential construction projects and residential subdivision projects) to set aside at least 25 per cent of the dwellings constructed for the project to be reserved for transfer to the State at no consideration – that is, at no cost.

The explanatory notes describe the 25 per cent of projects being set aside as being ‘gifted to the state’. In his ruling of 11 May 2023, Mr Speaker stated the ‘reality is that these set-asides and transfers are not a scheme for gifts to the State, but a compulsory acquisition scheme for no consideration’.

The committee recommends that the Bill not be passed.

Summary of stakeholder views

During the course of the inquiry, the committee heard from the Member for South Brisbane, the Department of State Development, Infrastructure, Local Government and Planning and a range of industry representatives and interest groups.

Those outlining support for the Bill generally did so on the basis that there was a need to increase the availability of social and affordable housing for Queenslanders who were experiencing housing stress. Submitters advocated for public housing to be built closer to places of work and services to reduce travelling hours and highlighted the benefits of integrating communities through social inclusion. Other submitters expressed support for inclusionary zoning but were opposed to the policy approach taken in the Bill, concerned about the potential impact it would have on industry, housing supply and housing costs.

Submitters opposed to the Bill contended that mandating the transfer of 25 per cent of dwellings or lots in developments/subdivisions of 10 or more would have significant consequences for the delivery of housing in Queensland, predicting that this proposed policy would affect the feasibility of many projects and impede residential development projects from progressing. These submitters concluded that the Bill would actually have a negative impact on housing supply, contrary to the objective of the Bill.

The ability to implement the proposed policy in rural and regional locations was also called into question due to often-smaller scale developments in these areas and isolation from transport and services, important factors for public housing.

The Bill also appears to exclude community housing providers from the proposed scheme despite their collective significant experience in developing, owning, managing, and operating social and affordable housing. Submitters were concerned that the Bill as drafted would result in delivering new public housing that was not fit for purpose.

Some submitters expressed unease about the lack of clarity on who would be responsible for: enforcing the transfer of 25 per cent of relevant dwellings/lots, ensuring the assets are maintained as a public benefit, and the costs of a) funding trunk infrastructure requirements to service new public housing developments; b) ongoing maintenance; c) body corporate; d) insurance of the building. Furthermore, the Bill does not contemplate how the introduction of the proposed inclusionary zoning strategy via the subsequent Bill would interact with Queensland’s current planning system with concern that changes would likely be required to the *Planning Act 2016*.

The Bill does not have sufficient regard to fundamental legislative principles

While the Bill's objectives of increasing the stock of public housing and integrating public housing in residential areas are laudable aims, we do not consider the Bill to be compliant with the *Legislative Standards Act 1992* in that it does not have sufficient regard to fundamental legislative principles.

The Bill is not compatible with human rights in relation to property

We also conclude that the Bill arbitrarily deprives developers of their property and that the limitation on their property rights is not reasonable and justifiable, having regard to section 13 of the *Human Rights Act 2019*.

Concluding remarks

We acknowledge the housing challenges that many Queenslanders are currently experiencing and while we do not support the Bill's proposed inclusionary zoning policy that could adversely impact the development industry, housing prices and ultimately housing supply, we note that other inclusionary zoning strategies have had some success in other jurisdictions.

In this regard, we are encouraged to see the Queensland Housing and Homelessness Action Plan 2021-25 include a commitment that the Queensland Government 'investigate introducing inclusionary planning requirements into the planning framework' and that work on this is underway.

1 Introduction

1.1 Policy objectives of the Bill

The explanatory notes state that the primary objective of the Bill is to build public housing by requiring property developers to do so. Its secondary objective is to integrate public housing within other residential areas to maximise social inclusion.¹

1.2 Achievement of policy objectives

The Bill proposes to achieve its objective by requiring the Queensland Government to introduce an inclusionary zoning strategy into Parliament within 2 months of the Bill's ascent.² Inclusionary zoning is a land use planning intervention by government that either mandates or creates incentives, so a proportion of a residential development includes affordable housing dwellings.³

The Bill does not include details of the inclusionary strategy; rather, it provides objectives that the future legislated strategy must meet. These are:

- For all **residential development projects** completed on or after 1 July 2024, at least 25 per cent of the dwellings (rounded to the nearest whole number) constructed for the project are to be gifted to the state for the purpose of providing public housing.
- Each reserved dwelling is to be finished to the same standard and have the same features as the other dwellings constructed for the project (including the same total floor area).⁴
- For all **residential subdivision projects** completed after 1 July 2024, at least 25 per cent of the lots (rounded to the nearest whole number) created for the project are to be gifted to the state for the purpose of providing public housing.⁵

The Bill defines a residential development project as a development, carried out by an entity other than the state, related to the construction of 10 or more dwellings.⁶ A residential subdivision project is defined as a development carried out by an entity other than the state, related to the subdivision of 1 lot into 10 or more lots on which dwellings can lawfully be constructed.⁷

1.3 Estimated cost for government implementation

The explanatory notes advise that any costs arising from the drafting and development of an inclusionary zoning strategy will be met from existing agency resources.⁸ However, the Department of State Development, Infrastructure, Local Government and Planning (DSDILGP) expressed concern about the cost implications to the state of implementing the strategy.

1.4 Consultation

The explanatory notes state that the Member for South Brisbane has had contact with 'thousands of Queenslanders who are affected by this [housing] crisis', including those on the housing register, renters, people experiencing homelessness, West End Community Association, Queensland Council of

¹ Explanatory notes, p 3.

² Explanatory notes, p 3.

³ Australian Housing and Urban Research Institute, *Understanding inclusionary zoning*, <https://www.ahuri.edu.au/analysis/brief/understanding-inclusionary-zoning>.

⁴ Explanatory notes, p 3.

⁵ Explanatory notes, p 3.

⁶ Explanatory notes, p 5.

⁷ Explanatory notes, p 5.

⁸ Explanatory notes, p 4.

Social Services, Tenants Queensland and Q Shelter. These contacts ‘inspired’ the Member for South Brisbane to introduce the Bill.⁹ The explanatory notes do not indicate with whom the Member for South Brisbane has consulted on the Bill itself.

1.5 Affordable housing policy in Queensland

Housing pressures including the availability of affordable housing remains a key challenge in Queensland, as it is in many states and territories. As of June 2021, 27,000 Queenslanders were on the social housing register.¹⁰ Moreover, according to a recent study by the University of New South Wales, there are approximately 150,000 households across Queensland whose needs for affordable housing are currently unmet (i.e. either homeless or low income recipients in private rental housing and paying more than 30 per cent of their household income in rent).¹¹

In regard to the social housing register, the Queensland Minister for Housing advised the Community Support and Services Committee during the budget estimates process for 2023-24 in August 2023:

In 2022-23 the average wait time for an applicant to access a social home was 19.3 months. This reflects the tightening of private market conditions, low private market rental vacancy rates, increasing rental and house sale prices, reductions in social housing tenant turnover and low social vacancy rates.¹²

The *Queensland Housing Strategy 2017-2027* is a 10-year framework which aims to provide all Queenslanders with a better pathway to safe, secure and affordable housing that meets their needs and enables participation in social and economic life.¹³ This vision was reaffirmed in the *Queensland Housing and Homelessness Action Plan 2021-2025* which provided a framework for delivering housing with support that is integrated across government and the community sector and included an additional \$20 million over 4 years to provide essential housing support for those at risk of homelessness.¹⁴

As well as direct investment in public housing, the Queensland Government supports a range of programs, policies and services to deliver affordable housing, including:

- Housing Investment Growth Initiative, a coordinated capital program to support new social housing and partnerships with the community housing sector
- Housing Investment Fund, a \$2 billion fund to provide subsidies, capital grants and other support to encourage a range of partners from Registered Community Housing Providers to superannuation funds to develop, finance and operate additional social and affordable housing
- Homes for Homes, a program in which 0.1 per cent of a dwelling’s sale value is donated tax free to the Home for Homes charity who use the proceed to build affordable homes
- Rural Workers Initiative, repurposing underutilised state buildings for rural worker accommodation

⁹ Explanatory notes, p 4.

¹⁰ Hal Pawson et al, *A blueprint to tackle Queensland’s housing crisis*, March 2023, p 4.

¹¹ Hal Pawson et al, *A blueprint to tackle Queensland’s housing crisis*, March 2023, p 4.

¹² Community Support and Services Committee, *Estimates Pre-Hearing Question on Notice*, No.5, 10 August 2023.

¹³ Department of Communities, Housing and Digital Economy, *About the Queensland Housing Strategy 2017-2027*, <https://www.housing.qld.gov.au/about/strategy/housing/about>.

¹⁴ Department of Communities, Housing and Digital Economy, *Queensland Housing and Homelessness Action Plan 2021-2025*, 2021, p 2; Department of Housing, *towards ending homelessness*, <https://www.housing.qld.gov.au/about/strategy/housing/towards-ending-homelessness>, October 2022

- Build to Rent, a project to provide affordable homes for key workers
- planning changes to support the growth of rooming accommodation
- services to support entry into the private rental sector (Bond Loan Plus, Rent Subsidy, No Interest Loan Scheme, Helping Hand Headlease¹⁵).¹⁶

1.6 Inclusionary zoning

As noted above, Inclusionary zoning is a land use planning intervention by government that either mandates or creates incentives, so a proportion of a residential development includes affordable housing dwellings.¹⁷

There are 2 main types of inclusionary zoning:

1. A mandatory model which requires that a number of affordable homes are included in developments as a condition of planning approval.
2. A voluntary incentive model in which new affordable housing is encouraged by reducing costs for developers (e.g. by relaxing density controls in exchange for dedicated affordable housing).

The explanatory notes list the following examples of inclusionary zoning practices in Australia:

- South Australia, where 15 per cent of new dwellings in all significant developments are mandated to be affordable
- Australian Capital Territory, where 20 per cent of all new estates are required to be affordable
- Sydney, where 2 per cent of housing in certain specified zones (Ultimo/Pymont) is mandated as affordable.

Though not mentioned in the explanatory notes, development agencies in Western Australia and the Northern Territory have also adopted inclusionary zoning policies, as well as several overseas cities, including London and New York.¹⁸

The Bill differs from other inclusionary zoning proposals in fundamental ways in that it:

- applies to existing development schemes, not just proposed schemes.
- mandates that developers transfer a proportion of properties at no consideration to the state as opposed to merely committing to selling/renting them at an 'affordable' level (e.g. 80 per cent of median house price).

1.7 Inclusionary zoning proposals in Queensland

In Queensland, the Department of Communities, Housing and Digital Economy (department/Department of Housing) proposed inclusionary zoning in the early 2000s during consultations on the *State Planning Policy on Affordable Housing, Residential Development and*

¹⁵ This is where the state leases a private rental property through a real estate agent and subleases it to an applicant.

¹⁶ See, for example, Queensland Government, *Queensland Housing Roundtable – Housing context and actions*, https://www.qld.gov.au/__data/assets/pdf_file/0035/383768/Queensland-Housing-Summit-factsheet-March-2023.pdf.

¹⁷ Australian Housing and Urban Research Institute, *Understanding inclusionary zoning*, <https://www.ahuri.edu.au/analysis/brief/understanding-inclusionary-zoning>.

¹⁸ Australian Housing and Research Institute, *Understanding inclusionary zoning*, <https://www.ahuri.edu.au/analysis/brief/understanding-inclusionary-zoning>.

Community Wellbeing.¹⁹ Brisbane City Council also proposed inclusionary zoning policies in the draft *West-End Woolloongabba Local Area Plan*.²⁰

The current *Queensland Housing Strategy 2017-2027 Action Plan* includes a provision that where surplus state land is developed for residential use, 5 per cent to 25 per cent of new dwellings be designated for social or affordable housing.²¹ A similar provision was included in the *Queensland State Infrastructure Plan* (2016) and the *National Housing and Homelessness Agreement (Queensland)*.²²

Most recently, the *Queensland Housing and Homelessness Action Plan 2021-25* included a commitment that DSDILGP and Department of Housing 'investigate introducing inclusionary planning requirements into the planning framework'.²³

1.8 National framework for the provision of housing

The Australian Government is developing the National Housing and Homelessness Plan (the Plan) in collaboration with state and territory governments. The Plan will be a 10-year strategy and set out the key short, medium and longer term reforms needed to address housing challenges. Among the measures supported in the Plan are the National Housing Accord, which sets out a shared ambition to build one million new, well-located homes over 5 years from 2024, and the \$10 billion Housing Australia Future Fund which will create a secure, ongoing pipeline of funding for social and affordable rental housing.²⁴

2 Legislative compliance

Our deliberations included assessing whether the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* and the *Human Rights Act 2019*.

2.1 Suitability of the explanatory notes

In his ruling on the Bill delivered on 11 May 2023, Mr Speaker highlighted the potentially misleading nature of the explanatory notes.²⁵ His arguments were two-fold:

- 1) The explanatory notes refer to a proportion of properties being 'gifted to the state' when in fact the Bill seeks compulsory acquisition without compensation.
- 2) Because the Bill involves compulsory acquisition, the explanatory notes should contain an assessment of its consistency with the fundamental legislative principles that legislation have regard to the rights and liberties of individuals. Specifically, they should refer to section 4, clause 3

¹⁹ National Shelter, *Inclusionary Zoning*, p 14, <http://shelter.org.au/site/wp-content/uploads/190325-Inclusionary-Zoning-Report-V6-Final.pdf>.

²⁰ National Shelter, *Inclusionary Zoning*, p 14, <http://shelter.org.au/site/wp-content/uploads/190325-Inclusionary-Zoning-Report-V6-Final.pdf>.

²¹ Department of Communities, Housing and Digital Economy, *Queensland Housing Strategy 2017-2027 Action Plan*, p 4.

²² Department of Infrastructure, Local Government and Planning, *State Infrastructure Plan, Part A: Strategy*, March 2016, p 51; *National Housing and Homelessness Agreement (Queensland)*, p 4.

²³ Department of Communities, Housing and Digital Economy, *Queensland Housing and Homelessness Action Plan 2021-2025*, 2021, p 10.

²⁴ Australian Government, Department of Social Services, *Developing the National Housing and Homeless Plan*, <https://www.dss.gov.au/housing-support-programs-services-housing/developing-the-national-housing-and-homelessness-plan>.

²⁵ Acting Speaker, Queensland Parliament, Record of Proceedings, 11 May 2023, p 1383.

(i) of the *Legislative Standards Act 1992* [provides for the compulsory acquisition of property only with fair compensation].²⁶ Instead, the explanatory notes merely state:

Requiring the development industry, which makes huge windfall profits based on State land zoning decisions, to transfer a portion of the dwellings it creates should be viewed as a condition of doing business in Queensland rather than a compulsory acquisition.²⁷

It is also the committee's view that this statement does not properly address fundamental legislative principles. While failure to comply with the explanatory notes requirement of the *Legislative Standard Act 1992* does not affect the validity of a piece of legislation, they are nonetheless important means to inform parliamentary debate, aid scrutiny and, if the legislation is passed, assist in interpretation.²⁸ This has impeded our scrutiny of the Bill.

While the explanatory notes include a statement about how the policy objectives will be achieved by the Bill and an explanation of the purpose and intended operation of each clause,²⁹ they also include a misdescription because the mandatory transfer by developers of at least 25 per cent of dwellings or lots in certain development is described as being 'gifted' to the state. A 'gift' is defined as something willingly given to someone without payment. That is not the situation here. Developers would be required to transfer the property by force of law, through compulsory acquisition without compensation

Committee comment

This Bill proposes a precipitous action: the compulsory acquisition of property without compensation, breaching the fundamental legislative principle regarding the rights and liberties of individuals. Yet, the Bill's explanatory notes do not give a reasonable justification for this not insubstantial breach of fundamental legislative principles. This committee is of the opinion that this is a profound and fatal flaw of the Bill.

2.2 Legislative Standards Act 1992

Our assessment of the Bill's compliance with the *Legislative Standards Act 1992* identified issues in regard to compulsory acquisition of property. The committee finds that the Bill is not compliant with the *Legislative Standards Act 1992* in that it does not have sufficient regard to fundamental legislative principles. This is discussed further in section 3.6.

2.3 Human Rights Act 2019

Our assessment of the Bill's compatibility with the *Human Rights Act 2019* (HRA) is included in section 3.7. The committee finds that the Bill is not compatible with human rights in relation to property rights.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

2.4 Should the Bill be passed?

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

²⁶ *Legislative Standards Act 1992*, s 4(23)(i).

²⁷ Explanatory notes, p 4.

²⁸ *Legislative Standards Act 1992*, s 4(25).

²⁹ LSA, s 23(1)(c), (h).

Recommendation 1

The committee recommends the Planning (Inclusionary Zoning Strategy) Amendment Bill 2023 not be passed.

3 Examination of the Bill

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

3.1 Support for increasing social and affordable housing

Support for the Bill was based generally on the need to increase the availability of social and affordable housing for Queenslanders who are experiencing housing stress. Submitters advocated for public housing to be built closer to places of work and services to reduce travelling hours and highlighted the benefits of integrating communities through social inclusion.

3.1.1 Form submissions

Ninety-five form submissions, received via an email template originating from the Member for South Brisbane's website, supported the Bill.

These submitters commented that many Queenslanders were experiencing housing stress, particularly low-income families who often needed to move further away from the city or their places of work to find affordable accommodation. This often resulted in people travelling hours each day on public transport. These submitters asserted that requiring property developers to 'set aside' one in 4 new dwellings as public housing, as provided for in the Bill, would reduce the social housing waitlist and create diverse and liveable inner-city neighbourhoods.³⁰

3.1.2 Support for introducing an inclusionary zoning policy

Several submitters specifically supported the introduction of inclusionary zoning to manage housing affordability, availability and accommodation needs, and advance social justice.³¹

QCOSS supported the introduction of 'meaningful inclusionary zoning to obligate private developers to increase the supply of social and affordable housing in Queensland'. QCOSS cited 'strong evidence' from examples of implementation on public and private land in South Australia, New South Wales and the Australian Capital Territory that showed inclusionary zoning policies were 'an effective mechanism to deliver large-scale affordable housing contributions in Australia'. QCOSS noted the *Queensland Housing and Homelessness Action Plan 2021-25* identifies inclusionary planning requirements as a tool to deliver social and affordable housing.³² Other supporters of the principle of inclusionary zoning included: Kurilpa Futures, Planning Institute Australia, Civity, BHC Creating Liveable Communities and National Shelter.³³

However, while the principle of inclusionary zoning found support among submitters, the Bill's approach to implementing an inclusionary zoning policy as a strategy to increase public housing stock was largely not supported by submitters.³⁴ Livingstone Shire Council stated there were 'better solutions than the one proposed, which has a number of flaws in terms of what it is attempting to achieve and perhaps is a little disassociated from economic realities in the sense of how the market will respond to this'.³⁵

³⁰ See, for example, submission 1.

³¹ See Kurilpa Futures, submission 3; Noosa Council, submission 4; QCOSS, submission 5.

³² Submission 5, pp 1, 2.

³³ Kurilpa Futures, submission 3, p 2; Planning Institute Australia, submission 10, p 1; Civity, submission 11, pp 3-5; BHC Creating Liveable Communities, submission 14, pp 4-5; National Shelter, submission 20, pp 5-6.

³⁴ Planning Institute Australia, submission 10, p 1; Civity, submission 11, pp 2-3; BHC Creating Liveable Communities, submission 14, pp 4-5; National Shelter, submission 20, p 4.

³⁵ Public hearing transcript, Brisbane, 21 August 2023, p 2.

Planning industry representatives were opposed to the Bill's approach based on the view that inclusionary zoning should not be used as an alternative to state governments providing social housing.³⁶ Submitters' alternate proposals for implementing inclusionary zoning policy are discussed in section 3.3.

3.2 Opposition to the Bill

Submitters raised a number of issues with the Bill. These are outlined below.

3.2.1 Proposed number of dwellings/lots to be transferred to the state

As part of its inclusionary zoning policy, the Bill proposes, for all residential construction projects and residential subdivision projects completed on or after 1 July 2024, to reserve for transfer at least 25 per cent of the dwellings/lots (rounded up to the nearest whole number) within projects of 10 or more dwellings/lots to the state of Queensland for the purpose of providing public housing.³⁷

Submitters raised various issues with the proposed number of dwellings/lots that would be required to be transferred to the state if the Bill passed.

3.2.1.1 *Impact on developers, housing prices and housing supply*

Several stakeholders reported on the current challenges faced by the Queensland construction and development sectors, including increased material and wage costs, labour shortages, inflation, interest rates, and falling business and consumer sentiment, all of which would influence the financial viability of the private sector to deliver on the Bill's proposal for public housing.³⁸ As the Property Council of Australia (Property Council) summarised:

The Bill fails to recognise these fundamental realities of the construction market in Queensland and its capacity to deliver any new housing, let alone with project feasibility reduced by 25 per cent.³⁹

Submitters stated that requiring the development industry to transfer 25 per cent of dwellings/lots to the state would have several impacts including:

- increasing the overall cost of housing for new home buyers (as developers would pass on the extra costs to the buyers of the other 75 per cent of dwellings/lots) or increasing rents to achieve return on investments
- decreasing financial feasibility of projects for developers, which would disincentivise private development
- developers who lack experience in providing affordable products would struggle to comply with the provision, with the impact flowing on to the sustainability of small businesses, employment and families.⁴⁰

³⁶ Planning Institute of Australia, submission 10; Civity, submission 11.

³⁷ Explanatory notes, p 3; cl 3. *Residential construction projects* are defined in the Bill as any development carried out by an entity other than the state relating to the construction of 10 or more dwellings. *Residential subdivision projects* are defined in the Bill as any subdivision of 1 lot into 10 or more lots on which dwellings can be lawfully constructed.

³⁸ See also Property Owners' Association of Queensland, submission 6, p 1; Livingstone Shire Council, submission 8, p 1.

³⁹ The Property Council of Australia, submission 18, p 2. See also Property Owners' Association of Queensland, submission 6, p 1; Livingstone Shire Council, submission 8, p 1; Housing Industry Association, submission 7, p 1.

⁴⁰ Livingstone Shire Council, submission 8, p 1; Noosa Council, submission 4; Property Owners' Association of Queensland, submission 6, p 2; Housing Industry Australia, submission 7, p 1; Livingstone Shire Council, submission 8, p 1; Community Housing Industry Association Qld, submission 9, p 2; BHC Creating Liveable

Ultimately, submitters argued, this would result in further increases to land and building prices, reduce investment in new housing and therefore limit housing supply, negatively impacting housing availability, contrary to the objective of the Bill.⁴¹

In terms of access to financing, the Urban Development Institute of Australia Queensland (UDIAQ) also submitted the Bill would have an ‘enormous impact’ and ‘certainly reduce the number of new dwellings industry could deliver each year as projects would not pass feasibility and commercial viability testing’. This would mean local development companies would not be able to access financing nor national development companies attract investment funding to Queensland.⁴²

DSDILGP agreed that the ‘mandatory application of the policy to require the transfer of dwellings and lots to the government for public housing appears to be a simple policy position, but it could have significant consequences for the delivery of housing in Queensland’, including affecting the feasibility of most projects and stopping residential development projects from progressing. DSDILGP stated that house supply would dwindle, contributing further to the housing challenge.⁴³

Some submitters added that delivering public housing was not the responsibility of developers.⁴⁴ Indeed, Housing Industry Australia was opposed to the Bill or any mandatory requirements for inclusionary zoning that could be considered an ‘inequitable tax on new housing’.⁴⁵ DSDILGP confirmed the Queensland Government’s commitment to supporting the delivery of housing options for all Queenslanders, recognising its role along with local governments in addressing housing needs for the community.⁴⁶ See section 3.4 on what the government is doing to improve housing availability.

The Member for South Brisbane acknowledged that one of the main criticisms of the Bill was that it would adversely affect developer profits and reduce the incentive for developers to bring new supply into the housing market, and that costs would be passed on at market price to home buyers. The Member argued, however, that some form of inclusionary zoning is present in much of Europe and North America, and this showed that ‘well-designed inclusionary zoning works to both increase the total supply, increase the supply of affordable housing to those who need it most, and puts downward pressure on prices across the rental market’. The Member quoted research from Professor Nico Calavita, but did not provide that research, who found that the loss of potential earnings is transmitted to land values rather than developer profits or passed on at cost market prices for dwellings.⁴⁷

Similarly, Community Housing Industry Association Queensland (CHIA) supported mandatory inclusionary zoning (MIZ), stating that if it is designed well, it will not add costs to the development process. CHIA explained that developers will know when they purchase land that they will be required to provide social and affordable housing and factor that price into the price they pay for the land, and that it would not reduce land supply. However, CHIA stated that MIZ only operates well in areas where

Communities, submission 14, p 2; Local Government Association of Queensland, submission 15, p 11; Planning Institute Australia, submission 10, p 2; Civity, submission 11, p 2.

⁴¹ Noosa Council, submission 4; Property Owners’ Association of Queensland, submission 6, p 2; Livingstone Shire Council, submission 8, p 1; Community Housing Industry Association Qld, submission 9, p 2; Urban Development Institute of Australia Queensland; submission 12, p 3; Local Government Association of Queensland, submission 15, p 11; Planning Institute Australia, submission 10, p 2; Civity, submission 11, p 2.

⁴² Submission 12, p 3.

⁴³ DSDILGP, correspondence, 17 July 2023, p 3.

⁴⁴ Property Owners’ Association of Queensland, submission 6, p 1; Livingstone Shire Council, submission 8, p 1; Property Council of Australia, submission 18, p 2.

⁴⁵ Submission 7, p 1.

⁴⁶ DSDILGP, correspondence, 17 July 2023, p 5.

⁴⁷ Dr Amy MacMahon, Member for South Brisbane, public briefing transcript, Brisbane, 22 May 2023, p 2; see also Dr Amy MacMahon, Member for South Brisbane, correspondence, 16 May 2023, p 2.

land values have risen ‘massively and continue to rise’, not in locations where land is relatively cheap, which calls into question the Bill’s application across all of Queensland. Furthermore, CHIA did not support the percentage of dwellings/lots to be transferred as proposed under the Bill but instead 5 per cent to 10 per cent.⁴⁸ The Planning Institute Australia also emphasised that it was ‘critical that any inclusionary zoning framework is carefully implemented to ensure it does not impact the viability of new development and therefore the delivery of new homes’.⁴⁹

3.2.1.2 Impact in rural/regional locations

Submitters discussed how implementing the proposed strategy would be more difficult in rural and regional Queensland as opposed to urban locations. There were calls for a regionalised approach to implementing housing policy that recognised ‘the diversity of Queensland and the diversity of need’ based on ‘good modelling’.⁵⁰ Noosa Council stated that any policy requiring mandatory inclusionary zoning aimed at increasing public housing should be limited to urban residential lots as regional and rural locations are often isolated from transport and services.

Livingstone Shire Council also questioned how the Bill would work in the different regional and urban markets. Livingstone Shire Council commented on the recent collapse of a number of construction businesses, expressing the view that they did not know of any developer in the local region that would be able to sustain a 25 per cent provision and ‘stay alive’ as they were operating on ‘pretty thin margins at the moment’.⁵¹ Noosa Council expressed a similar view, suggesting that 10 per cent was a more realistic figure to achieve the objective of the Bill to build public housing.⁵²

Livingstone Shire Council added that inclusionary zoning in the United States has only been found to work well in very high dollar markets in a quid pro quo arrangement where developers can build more units in compensation for providing affordable units. This incentive is not provided for in the Bill. According to Livingstone Shire Council, the policy ‘sounds good, but it has limited application and needs to be treated very cautiously’.⁵³

DSDILGP was concerned also about the state-wide effect of the Bill, stating that some parts of Queensland do not receive development applications that provide more than 10 dwellings and that this would result in only increasing public housing in certain areas, and not necessarily always where it was needed.⁵⁴ The Member for South Brisbane acknowledged that this could be an outcome of the proposed policy, but stated that she saw ‘more density coming into all sorts of regional centres right across Queensland’ in the future.⁵⁵

3.2.1.3 Impact on local government development applications

Several submitters were particularly concerned about the ‘unreasonably high’ and ‘unworkable’ nature of the 25 per cent contribution on development applications in regional and rural areas where development and building costs are already high.⁵⁶ Livingstone Shire Council stated there was potential for a suppressive impact on development applications beyond the ‘commencement date’ of the Bill’. Council provided research from the United States that demonstrated that the policy does suppress the number of dwellings being built, resulting in the delivery of fewer affordable dwellings,

⁴⁸ Public hearing transcript, Brisbane, 21 August 2023, pp 4, 5.

⁴⁹ Public hearing transcript, Brisbane, 21 August 2023, p 9.

⁵⁰ Q Shelter, public hearing transcript, Brisbane, 21 August 2023, p 13.

⁵¹ Public hearing transcript, Brisbane, 21 August 2023, p 2.

⁵² Submission 4, pp 2, 3.

⁵³ Public hearing transcript, Brisbane, 21 August 2023, p 2.

⁵⁴ DSDILGP, correspondence, 17 July 2023, p 3.

⁵⁵ Dr Amy MacMahon, Member for South Brisbane, public briefing transcript, Brisbane, 22 May 2023, p 5.

⁵⁶ Local Government Association of Queensland, submission 15, p 10; National Shelter, submission 20, p 2.

and so increases housing costs as a result.⁵⁷ Council was also concerned about the uncertainty for local governments to levy infrastructure charges for trunk infrastructure networks on development to be gifted under the strategy, which was likely to have enormous impacts.⁵⁸

Livingstone Shire Council also pointed to definitions in the Bill not aligning with the *Planning Act 2016* and provided the following example:

The term ‘completed’ used in the triggers/thresholds as outlined, is not widely used in the *Planning Act 2016*—this conjures many questions and is not accurate for complete understanding of when it is applicable.⁵⁹

The Member for South Brisbane explained that the provisions would apply across the state as experience from other jurisdictions has shown that ‘piecemeal approaches’ result in negative outcomes, such as developers focusing on building and developing in areas outside those included in inclusionary zoning.⁶⁰

3.2.2 Lack of incentives for developers

Several submitters commented that the Bill does not provide any incentives to developers to accompany the proposed mandatory public housing contribution.⁶¹ The Local Government Association of Queensland (LGAQ) stated that a lack of incentives could lead to applicants—who want to avoid the proposed thresholds—lodging development applications for projects with fewer than 10 dwellings or lots or otherwise staging development to avoid the threshold where possible.⁶² Livingstone Shire Council supported this view, adding that many regional areas do not develop large housing projects and that incentives such as reduced costs or increased yield for developers would be needed in order for developers to sustain the ‘gifting’ of dwellings/lots.⁶³

The Property Council also supported voluntary initiatives or incentives that would reward or compensate the private sector for providing below market housing (key worker and affordable housing). The Property Council provided the following examples:

Positive examples of this can be seen in the Queensland Government's recent announcement of tax incentives for build-to-rent projects that deliver a proportion of affordable housing, or in the NSW Government's announcement of last week, that will allow a 30 per cent uplift in Gross Floor Area (GFA) for residential projects that deliver 15 per cent for more GFA of affordable housing.⁶⁴

3.2.3 State management of the housing asset and role of community housing providers

Social housing is government subsidised short and long-term rental housing, traditionally available to people on very low incomes.⁶⁵ In Queensland, social housing includes public housing, which is owned and managed by the Queensland Government; Aboriginal and Torres Strait Islander housing; and community housing, which is housing owned and managed by community housing providers (CHPs)

⁵⁷ Public hearing transcript, Brisbane, 21 August 2023, p 2.

⁵⁸ Submission 8, p 1.

⁵⁹ Submission 8, p 1.

⁶⁰ Dr Amy MacMahon, Member for South Brisbane, public briefing transcript, Brisbane, 22 May 2023, p 4.

⁶¹ LGAQ, submission 15, p 11; Noosa Council, submission 4.

⁶² Submission 15, p 10.

⁶³ Public hearing transcript, Brisbane, 21 August, p 3.

⁶⁴ Submission 18, p 2.

⁶⁵ The Australian Housing and Urban Research Institute (AHURI), *Brief: What is the difference between social housing and affordable housing - and why do they matter?*, 28 February 2023, <https://www.ahuri.edu.au/analysis/brief/what-difference-between-social-housing-and-affordable-housing-and-why-do-they-matter>.

in partnership with the Queensland Government.⁶⁶ As at 30 June 2023, there were 75,111 social housing dwellings in Queensland, of which 59,008 were department managed and 16,103 were non-department managed.⁶⁷

If the Bill passed, submitters were concerned about a) the capacity of the Queensland Government to manage additional housing; b) the exclusion of CHPs as beneficiaries to the proposed scheme, which some submitters claim would be to the detriment of their clients; and c) cost implications for the state.⁶⁸

3.2.3.1 Capacity of the Queensland Government to manage additional public housing

The UDIAQ purported that the Department of Housing was not currently equipped to manage a large influx of additional properties, particularly within the timeframe envisaged in the Bill.⁶⁹ The Property Council also questioned whether the Department of Housing had the capacity to manage dwellings of varying sizes, qualities, and locations.⁷⁰

An Auditor-General report released in August 2022 found that around 15 per cent of government-managed social housing is under occupied with the Department of Housing's processes for managing the housing register at the time of the report being ineffective. The report also found that the department would need to build additional dwellings and/or expand its use of other products and services to meet the need for social housing.⁷¹

3.2.3.2 Leveraging community housing providers

Community housing sector and local government representatives stated CHPs were well placed to develop, own, manage and operate the growth of social and affordable housing in particular local government areas, but the Bill did not take advantage of this.⁷² BHC Creating Liveable Communities reported that CHPs 'are well governed and managed, have the expertise to buy and develop assets which are fit for purpose, and deliver complex tenancy and property management functions'. Indeed, according to BHC Creating Liveable Communities, CHPs are also experienced in managing mixed-tenure communities, partnering with the private sector, and delivering a wider range of housing outcomes, including affordable rental, rent to buy and shared equity models.⁷³ The submitter also advised that it was more cost-effective for CHPs to develop the assets rather than the government, as they are subject to a number of taxation benefits, including a GST return based on their charitable status and not being required to pay land tax or stamp duty.⁷⁴

BHC Creating Liveable Communities noted that relying more on the community housing sector also directly aligns with the National Housing and Homelessness Agreement to encourage growth and support viability for the sector.⁷⁵

⁶⁶ Queensland Audit Office, *Report 1: 2022-23 - Delivering social housing services*, p 4.

⁶⁷ Hon Meaghan Scanlon MP, Minister for Housing, Response to Pre-hearing Estimates Question on Notice 16, Community Support and Services Committee, 10 August 2023.

⁶⁸ Community Housing Industry Association Queensland, submission 9, p 3; National Shelter, submission 20, p 2.

⁶⁹ Submission 12, p 2.

⁷⁰ Submission 18, p 3.

⁷¹ Queensland Audit Office, *Delivering social housing services - Report 1: 2022-23*, pp 1, 21.

⁷² BHC Creating Liveable Communities, public hearing transcript, 21 August 2023, p 4; Community Housing Industry Association Queensland, submission 9; National Shelter, submission 20; Noosa Council, Submission 4, p 3.

⁷³ Submission 14, p 2.

⁷⁴ Public hearing transcript, 21 August 2023, Brisbane, p 8.

⁷⁵ Submission 14, p 2.

See also 3.2.4 for a discussion on how CHPs can contribute positively to designing fit for purpose social housing.

3.2.3.3 Cost implications for the state

DSDILGP stated that the Bill would have ongoing cost implications for the state. As DSDILGP administers the Planning Act, costs would include the department covering any initial set up costs to implement the policy within the planning framework, as well as the costs of education and training campaigns with the development industry and councils. Cost implications for the Department of Housing would include ongoing funding streams to construct the dwellings on the reserved lots and funding the ongoing operation, maintenance and management costs of the public housing proposed to be delivered under the Bill.⁷⁶

3.2.3.4 Response from the Member for South Brisbane

The Member for South Brisbane stated that if the Queensland Government did not have the capacity to manage the additional housing, it would need to ‘expand’. The Member also argued that keeping public housing in the hands of the Queensland Government would mean the public benefit remains with it and housing would not be released into the private property market, making it unaffordable to those who need it. Finally, the Member also stated that a proportion of the homes could be allocated as community housing and be run by community or social housing providers.⁷⁷

3.2.4 Providing fit for purpose housing

BHC Creating Liveable Communities identified a range of considerations when developing fit for purpose social and affordable housing including design (such as accessibility), ongoing maintenance, capital expenditure, safety, security and ongoing cost of living for the tenant cohort, factors that the Bill does not address.⁷⁸ UDIAQ explained further that the Bill would deliver:

only what the market is delivering with no deliberation on location, nearby services, the level and suitability of finishes for the intended tenant, necessary access and design features, the cost of maintaining the dwelling or access to wrap-around services aimed at sustaining tenancies.⁷⁹

3.2.4.1 Design

The Bill would require each reserved dwelling to be finished to the same standard and have the same features as the other dwellings constructed for the residential construction project, as far as is practicable.⁸⁰ However, some submitters questioned whether this requirement would deliver well-designed and fit for purpose dwellings. Some submitters argued that the Bill would result in housing types that were not appropriate or responsive to community needs, resulting in a ‘mismatch’ between what would be gifted to the state and what was needed for public housing.⁸¹

For example, the number of bedrooms is an important consideration when designing dwellings for those on the social housing register as approximately 40 per cent qualify for a one-bedroom dwelling.⁸² Noosa Council explained that the Bill could see the development of larger floor plate units,

⁷⁶ DSDILGP, correspondence, 17 July 2023, p 4.

⁷⁷ Dr Amy MacMahon, Member for South Brisbane, public briefing transcript, Brisbane, 22 May 2023, pp 3, 5.

⁷⁸ Submission 14, p 3.

⁷⁹ Submission 12, p 4.

⁸⁰ Clause 3.

⁸¹ See, for example, Community Housing Industry Association Queensland, submission 9, p 3; The Property Council of Australia, public hearing transcript, Brisbane, 21 August 2023, p 10.

⁸² Submission 14, p 3.

as they are more profitable than smaller units where land values are higher, being transferred. This was a potential flaw in the Bill.⁸³

In raising concerns about providing fit for purpose housing, some submitters pointed to the Bill not leveraging CHPs to provide social and affordable housing. Q Shelter stated that community housing providers had the governance structure (regulated by the National Regulatory System for Community Housing) and the expertise to develop assets that were fit for purpose and could 'deliver complex tenancy and property management functions'. However, the model proposed under the Bill was 'too narrow' and offered 'no flexibility across tenures and methods of provision'.⁸⁴

3.2.4.2 Location

Locating public housing close to public transport, services and amenities is also vital. In relation to greenfield subdivisions, BHC Creating Liveable Communities advised that constructing dwellings for public housing a) would require significant investment from the Queensland Government and b) may be unsuitable for new social housing given a potential lack of appropriate access to supports and public transport connections.⁸⁵ LGAQ was similarly concerned about the Bill's proposal as it lacked clarity on location requirements for housing.⁸⁶

3.2.4.3 Limiting to public housing is concern

The Bill's primary objective is to build public housing, which is defined under the *Housing Act 2003* as 'a social housing service provided directly by the State'.⁸⁷ Submitters objected to the limiting nature of the Bill, stating that there is also a need for affordable housing.⁸⁸ Noosa Council stated its greatest housing issue is with the high numbers of individuals and families who cannot secure housing but do not qualify for social housing, with many of these key workers in the area.⁸⁹

3.2.5 Implementation of the provisions

Submitters were concerned about how the Bill's provisions would work in practice and the timing of implementation.

3.2.5.1 Lack of clarity

The Bill is not clear about who is responsible for:

- enforcement and compliance of the Bill's requirement to transfer 25 per cent of relevant dwellings/lots
- ensuring the assets are maintained as a public benefit
- the costs of a) funding trunk infrastructure requirements to service new public housing developments; b) ongoing maintenance; c) body corporate; d) insurance of the building
- the location and product type in demand for social housing for developers to respond to.⁹⁰

⁸³ Submission 4, pp 2, 3.

⁸⁴ Submission 19, p 1.

⁸⁵ Submission 14, p 3.

⁸⁶ Submission 15, p 11.

⁸⁷ Section 8(4)

⁸⁸ Noosa Council, submission 4; Community Housing Industry Association Queensland, submission 9; LGAQ, submission 15; National Shelter, submission 20.

⁸⁹ Noosa Council, submission 4, p 3. See also LGAQ, submission 15, p 10.

⁹⁰ LGAQ, submission 15, p 12; Property Council of Australia, submission 18, p 3; Property Owners' Association of Queensland, submission 6, p 1.

DSDILGP also stated that it was not clear how long the Bill is proposing to secure the public housing for and that a timeframe should be considered; otherwise, it would be assumed it would be in perpetuity.⁹¹

3.2.5.2 *Interaction of the Bill's provision with the Queensland planning system*

DSDILGP stated that further changes would likely be required to the *Planning Act 2016* (Planning Act), which establishes Queensland's planning framework and the range of planning instruments that support the main planning systems, to achieve the objectives of the Bill. This is because the introduction of a mandatory requirement to gift dwellings/lots to the state in the Bill does not align with the current performance-based operation of the Planning Act. DSDILGP explained:

Introduction of mandatory requirements would mean that a development would need to be refused if it did not provide for the public housing or that the requirement would need to be included as a condition of approval. Consideration is required about what effect a mandatory requirement would have when considered as part of a development and any other unintended consequences that may arise as a result of application of that policy.⁹²

DSDILGP viewed the inclusionary zoning policy as proposed in the Bill to be 'essentially compulsory acquisition' of land or property. Further, as the Planning Act does not enable property to be taken without appropriate compensation, DSDILGP stated that the gifting of 25 per cent of dwellings or lots in certain projects, without remuneration to the owner, would likely exceed the power of the Planning Act.⁹³

DSDILGP was particularly concerned about how the following would work if the Bill passed:

- Further investigation would be required to confirm if the Bill's provisions meet the requirements of an adverse planning change and if compensation could be payable by local governments.
- Further consideration is required to consider how the reserved dwellings or lots requirement is determined and required in the planning framework. Although not stated in the Bill, it may be anticipated to be a condition of the development.
- In accordance with the Planning Act, all conditions of an approved development are required to be reasonable and relevant, having regard to the proposal and planning requirements. The Bill, if implemented appropriately and through conditions may have such conditions regularly challenged given the considerable impact the provision may have on project viability.
- The Planning Act also allows the ability to impose necessary infrastructure conditions; however, public housing is not considered trunk or development infrastructure, so these powers in the Planning Act are irrelevant.⁹⁴

3.2.5.3 *Lack of consultation*

The Planning Institute of Australia and Civity expressed disappointment about the lack of time for consultation with stakeholders on the Bill's proposed inclusionary zoning policy.⁹⁵ Civity explained:

The future success of any potential inclusionary zoning framework is highly reliant on significant time being spent to ensure the regulatory levers are appropriate, based on detailed technical analysis and

⁹¹ DSDILGP, correspondence, 17 July 2023, p 4.

⁹² DSDILGP, correspondence, 17 July 2023, p 2.

⁹³ DSDILGP, correspondence, 17 July 2023, pp 2, 3.

⁹⁴ DSDILGP, correspondence, 17 July 2023, p 4.

⁹⁵ Submission 10; submission 11.

meaningful stakeholder engagement. In my opinion, it is not possible for these processes to be completed within the timeframes contemplated by the Bill.⁹⁶

UDIAQ stated that consultation on the Bill had been ‘inadequate’, as the development industry was not consulted on how the Bill would impact them or the community on its views about locating inclusionary zoning buildings of greater height and density in their suburbs.⁹⁷

The Member for South Brisbane confirmed she had not consulted with developers on the Bill and that discussions around inclusionary zoning at council and state government levels should mean that developers are aware ‘that something like this is coming’. Therefore, they should already be considering it as ‘the cost of doing business in Queensland’.⁹⁸

3.2.5.4 Timeframe for introducing an inclusionary zoning strategy

Clause 3 of the Bill would require the Minister to introduce a subsequent Bill that would implement an inclusionary zoning strategy within 2 months after the date of assent of this Bill. The strategy would enact the inclusionary zoning policy as proposed within this Bill.⁹⁹ Noosa Council stated that the timeframe seemed ‘reasonable’ given the Bill was introduced in April 2023 and the committee’s reporting date was October 2023, as this would provide adequate time for the Queensland Government to develop a strategy.¹⁰⁰ However, other submitters considered the timeframe:

- ‘unrealistic’ as it did not consider the impact on projects already commenced¹⁰¹
- provided no notice or transition period to allow for a) the market to adequately respond to the new legislation¹⁰² and b) the development industry to factor relevant requirements into the cost of delivery on the land price.¹⁰³

The timing of any inclusionary zoning requirements would also need to be carefully considered in terms of the cumulative impact of current inflation pressures, interest rates, low rental availability, building industry workforce challenges and supply chain issues, and the impact on construction costs resulting from introducing new building standards under the National Construction Code.¹⁰⁴

DSDILGP raised concern that the timing might cause issues regarding pre-sold proposed residential development projects or residential lots which would become subject to the acquisitions for public housing rather than a private purchaser. Further consideration was required on how this would impact developments already in the pipeline.¹⁰⁵

The Member for South Brisbane advised that the 2 month timeframe would give the government time to consult stakeholders, ‘work out some of the details’, and address the needs of the Queensland housing system.¹⁰⁶

⁹⁶ Submission 11, p 2.

⁹⁷ Submission 12, pp 1, 2.

⁹⁸ Dr Amy MacMahon, public briefing transcript, Brisbane, 22 May 2023, p 3.

⁹⁹ Explanatory notes, p 3; clause 3.

¹⁰⁰ Submission 4, p 2.

¹⁰¹ CHIAQ, submission 9, p 4.

¹⁰² Q Shelter, submission 19, p 1.

¹⁰³ National Shelter, submission 20, p 3.

¹⁰⁴ Local Government Association of Queensland, submission 15, p 11. See also, Livingstone Shire Council, submission 8, p 1.

¹⁰⁵ DSDILGP, correspondence, 17 July 2023, p 3.

¹⁰⁶ Dr Amy MacMahon, public briefing transcript, Brisbane, 22 May 2023, p 9.

DSDILGP disputed this statement, stating that, while recognising the current housing challenges and the need for ‘swift action’, introducing a Bill within 2 months of assent is ‘not appropriate’ for the following reasons:

- Principal legislation is not commonly amended in this way, either to implement a policy position nor to enforce a timeframe for further amendment to the primary legislation
- Consideration would also be required about whether the Planning Act is the most appropriate vehicle to implement aspects of these requirements and whether subordinate legislation, such as the Planning Regulation 2017, would be more appropriate.¹⁰⁷

3.2.6 Impact on voting rights in Strata schemes

The Strata Community Association (Qld) did not support the Bill as it was concerned about the unintended consequences of the Queensland Government owning one quarter of voting entitlements in every strata scheme developed after the passage of the Bill. The submitter stated the Bill does not answer questions about how or if the Department of Housing may vote on issues. Given that body corporate decisions can often be complex, and the interests of the building or scheme may often conflict with the real or perceived interests of social housing tenants, it is unclear how the department would resolve the conflict of duties to the body corporate and potential tenants.¹⁰⁸

In this regard, the Bill is not clear how it would interact with the *Body Corporate and Community Management Act 1997* which sets out how votes are counted for special resolutions.¹⁰⁹ Special resolutions are used for significant body corporate decisions across all types of schemes, including spending decisions, as well as the alteration of by-laws. The threshold for a special resolution is to provide a protection against the ‘tyranny of the majority’. As drafted, the Bill would, in effect give the Department of Housing a veto on the will of the other owners.¹¹⁰

The submitter concluded:

Given the rights and responsibilities other owners have and the sway of votes the Department will have, this proposed arrangement is inherently problematic. We do not believe this problem can be solved in a manner which balances the rights and needs of all stakeholders appropriately.¹¹¹

The Bill could also reduce the number of potential body corporate volunteers on committees that are often already without sufficient people. As a result, body corporate committees could be made up entirely of Department of Housing representatives.¹¹²

3.2.7 Public housing contribution should not be cumulative

There was some confusion about the potential for the Bill to ‘double dip’ in gaining contributions to public housing. Local government representatives and DSDILGP were concerned that the Bill would require 25 per cent of lots under residential subdivision projects being transferred to the government for public housing and then, if the remainder of those lots were zoned medium to high density residential, there could be a further requirement to transfer more dwellings to the government as part of a residential construction project. This could disincentivise subdivision of land for distinct, discreet developments and ultimately reduce options for smaller developers.¹¹³

¹⁰⁷ DSDILGP, correspondence, 17 July 2023, p 2.

¹⁰⁸ Submission 13, pp 2, 3.

¹⁰⁹ *Body Corporate and Community Management Act 1997*, s 96.

¹¹⁰ Submission 13, pp 2, 3.

¹¹¹ Submission 13, p 2.

¹¹² Strata Community Association (Qld), submission 13, pp 2, 3.

¹¹³ Noosa Council, submission 4, p 2; Local Government Association of Queensland, submission 15, p 11; DSDILGP, correspondence, 17 July 2023, p 3.

3.3 Alternate solutions to increase public housing

Submitters provided alternate solutions to the approach proposed in the Bill to increase public housing, including the following:

- Alternate approaches to inclusionary zoning as proposed in the Bill
 - Mandatory inclusionary zoning should apply to all developments that create more than one additional dwelling, be a stated condition of the Development Approval consent, and the housing should be dedicated when the subdivision plan (Torrens or strata) is registered.¹¹⁴
 - 10 per cent of housing floor space developed on privately owned land in metropolitan areas should be designated, in perpetuity, as social and affordable rental housing, under community housing provider management, with higher targets on government owned land.¹¹⁵
 - Replace mandatory provisions with the introduction of voluntary initiatives or incentives that would reward or compensate the private sector for delivering affordable housing.¹¹⁶
 - Mix different models of inclusionary zoning ideas such as mandatory inclusionary zoning, voluntary negotiated inclusionary zoning requirement, social and affordable housing project planning requirements, and measures to prevent exclusionary zoning.¹¹⁷
 - Increase the scope of current infrastructure levies to include a social infrastructure component to generate funds for the development or purchase of new social and affordable rental housing.¹¹⁸
 - In certain Priority Development Areas identified under the *Economic Development Act 2012*, a charge applies for the increased benefit of zoning changes that lead to increased height and density for development. Developers in these areas could have the option of delivering fit-for-purpose housing, providing land for new social and affordable housing developments, or making a financial contribution.¹¹⁹
- Planning system and legislative reform, and government investment
 - Ensure planning system requirements for social and affordable housing are: developed with an understanding of Queensland land economics, development feasibility and processes; introduced with notice to enable the development industry to factor impact into land acquisition feasibility and land values; designed for regional market variations; streamlined, simple to implement, flexible and innovative for the market to enhance outcomes; underpinned by a clear and efficient system of administration; underpinned by approaches to planning that support housing intensification and diversity.¹²⁰

¹¹⁴ Community Housing Industry Association Queensland, submission 9, p 3.

¹¹⁵ Community Housing Industry Association Queensland, submission 9, p 3. See also BHC Creating Liveable Communities, submission 14, p 5; National Shelter, submission 20, p 2.

¹¹⁶ Property Council of Australia, submission 18, p 2. Examples provided include: the Queensland Government's recent announcement of tax incentives for build-to-rent projects that deliver a proportion of affordable housing, or the NSW Government's announcement that will allow a 30 per cent uplift in GFA for residential projects that deliver 15 per cent for more GFA of affordable housing.

¹¹⁷ Q Shelter, submission 19, pp 4, 5.

¹¹⁸ BHC Creating Liveable Communities, submission 14, p 4.

¹¹⁹ BHC Creating Liveable Communities, submission 14, p 4.

¹²⁰ Q Shelter, submission 19, p 5. See also UDIAQ, submission 12, p 6; National Shelter, submission 20, p

- Implement a moratorium on mooted regulatory and legislative changes that create uncertainty and 'unravel project feasibility'.¹²¹
- Invest in critical infrastructure to unlock housing development potential in locations where people want to live.¹²²
- Support an increase in the number of strata properties to achieve greater affordability.¹²³
- Reform body corporate fees especially 'management fees' which increase unaffordability.¹²⁴
- Local governments could implement incentives including assessment benchmarks that encourage a mix of housing types, densities, and lot sizes, ultimately leading to more affordable housing options, and offer reduced infrastructure charges for developments that include affordable housing, particularly in well-established areas that already have existing infrastructure in place.¹²⁵
- Introduce a housing levy to the existing infrastructure regime in Queensland to apply to all developments to fund new social and affordable housing rental supply.¹²⁶

3.4 Queensland Government actions to address the housing challenge

The Property Council stated that it was 'premature to consider implementation of the drastic policy position put forward in the Bill' as the Queensland Government is actioning outcomes from the Queensland Housing Summit of October 2022, one of which is to 'investigate and consult extensively on introducing inclusionary requirements into the planning framework to increase the supply of social and affordable housing'.¹²⁷

DSDILGP stated that any policies seeking to increase housing supply should be influenced by and considered alongside the level of state government intervention and the changes required to the planning framework.¹²⁸ As such, the Bill would require significant consideration and potential changes to the planning system in Queensland for the policy objectives to be achieved.

DSDILGP advised it was working with the Department of Housing and other agencies on a range of coordinated initiatives to address housing, including continuing to implement actions in the *Queensland Housing and Homelessness Action Plan 2021-2025*, and the actions identified in the Housing Summit Outcomes Report. DSDILGP confirmed that 'work is already underway' on investigating and consulting on introducing inclusionary requirements in the planning framework.¹²⁹

DSDILGP also advised that the Queensland Government had already amended the planning framework in the following ways to address the current housing affordability and supply challenges across Queensland:

- removing restrictions on who can live in secondary dwellings and allowing them to be rented out to anyone

¹²¹ UDIAQ, submission 12, p 5.

¹²² UDIAQ, submission 12, p 6.

¹²³ Strata Community Association Queensland, submission 13, p 2.

¹²⁴ Strata Community Association Queensland, submission 13, p 5.

¹²⁵ DSDILGP, correspondence, 17 July 2023, p 5.

¹²⁶ BHC Creating Liveable Communities, public hearing transcript, 21 August 2023, Brisbane, p 4.

¹²⁷ Submission 18, p 1.

¹²⁸ DSDILGP, correspondence, 17 July 2023, p 4.

¹²⁹ DSDILGP, correspondence, 17 July 2023, pp 2, 5.

- removing the need for development approvals for emergency housing in communities affected by natural disaster when certain requirements are met
- streamlining development approvals for community, social and affordable housing, and
- removing the need for development approvals for dwelling houses and rooming accommodation when certain requirements are met.¹³⁰

In addition, on 11 October 2023 the Minister for State Development, Infrastructure, Local Government and Planning and Minister for Assisting the Premier for Olympics Infrastructure introduced into Parliament the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023. The Bill is designed to optimise the planning framework's response to current housing challenges. Along with other measures, the Bill creates a reserve power for the State to take or purchase land or easements for planning purposes in order to help deliver development infrastructure in order to unlock development. This is in response to consultation which identified 75 under used urban sites in South East Queensland where a lack of development infrastructure was acting as a barrier to development. The Bill also creates a reserve power for the Planning Minister to determine a development application is a state facilitated application when it is delivering development that is a priority for the State, this includes providing affordable housing.¹³¹

3.5 Committee comment

The committee, like many Queenslanders wants to see an increase to the availability of social and affordable housing for Queenslanders who are experiencing housing stress, public housing to be built closer to places of work and services, and the benefits of integrating communities through social inclusion.

The committee shares the concern of submitters that the Bill would, in fact, have a detrimental effect on housing supply, and that the Bill's approach to inclusionary zoning as a means to increase public housing could disincentivise private development, impact the feasibility of projects and result in not only fewer projects proceeding but a higher cost of housing in general.

We are also concerned about how the proposed strategy would work in rural and regional locations where there are often smaller scale developments, thereby not meeting the threshold, and the tyranny of distance, making proximity to transport and services difficult, important factors for public housing. This could result in only increasing public housing in certain areas, and not necessarily always where it was needed.

The Bill also appears to exclude community housing providers from the proposed scheme despite their collective significant experience in developing, owning, managing, and operating social and affordable housing. Submitters were concerned that the Bill as drafted would result in delivering new public housing that was not fit for purpose.

We are also concerned about how the inclusionary zoning strategy proposed in the Bill would interact with Queensland's planning system, particularly that the gifting of 25 per cent of dwellings or lots in certain projects, without remuneration to the developer, would likely exceed the power of the Planning Act.

The Member for South Brisbane stated that developers should be aware 'that something like this is coming' and that they should already be considering it as 'the cost of doing business in Queensland.'¹³² The statement by the Member for South Brisbane belies the lack of knowledge behind this Bill. We

¹³⁰ DSDILGP, correspondence, 17 July 2023, p 5.

¹³¹ Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023, explanatory notes, p 3.

¹³² Public briefing transcript, Brisbane, 22 May 2023, p 5.

are concerned about a lack of consultation on this Bill with the development industry—the key players in delivering the objectives of the Bill.

While many submitters were opposed to the inclusionary zoning policy proposed in the Bill, some of these were supportive of inclusionary zoning in general to increase public and affordable housing stock. We note that the Queensland Government is actioning outcomes from the Queensland Housing Summit of October 2022, one of which is to ‘investigate and consult extensively on introducing inclusionary requirements into the planning framework to increase the supply of social and affordable housing’, and we are encouraged that work is already underway on this important avenue to improve housing availability for Queenslanders.

3.6 Fundamental legislative principles – compulsory acquisition of property

Whether legislation has sufficient regard to the rights and liberties of individuals depends, amongst other things, on whether the legislation provides for the compulsory acquisition of property only with fair compensation.¹³³

While the Bill itself would not provide for compulsory acquisition of property, it would oblige the Minister to introduce the subsequent Bill which would provide for compulsory acquisition of property without any compensation.

We consider, along with DSDILGP,¹³⁴ that a requirement to reserve for transfer to the state 25 per cent of the dwellings or lots in a project, without fair compensation, would be a considerable impost on developers.¹³⁵ Given the requirement in the Bill for rounding up to the nearest whole number, the true percentage of dwellings or lots that a developer would have to transfer may be higher than 25 per cent. For example, if 10 dwellings are constructed or 10 lots are created, 3 would have to be transferred to the state, which is 30 per cent of the dwellings or lots.¹³⁶ It would likely cost developers many hundreds of thousands of dollars on each development. It would be difficult to argue that this mandatory, significant transfer of property to the state is not compulsory acquisition. The Bill does not provide for any compensation.

Some projects may currently be underway that will not be completed until on or after 1 July 2024 (under a year away). If the Bill and the subsequent Bill are passed, the developers of these projects would be required to transfer to the state at least 25 per cent of the dwellings or lots, even though this impost would not have been factored into the original costings for the projects. The impact on these developers of this compulsory acquisition without fair compensation would therefore likely be even more substantial than for those aware of the required transfer prior to commencing a project.

It could be argued that the Bill is effectively requiring a condition be placed on certain residential construction and subdivision projects, similar to the imposition of a development condition on a development approval. However, the transfer requirements in the Bill differ from development conditions in that a development condition must not only be relevant to the development, it also must not be an unreasonable imposition on the development, or it must be reasonably required in relation

¹³³ *Legislative Standards Act 1992*, s 4(3)(i). Confiscation of the proceeds of crime is an example of compulsory acquisition of property that is acceptable without fair compensation. See Office of the Queensland Parliamentary Counsel (OQPC), *OQPC notebook*, p 73.

¹³⁴ DSDILGP, correspondence, 17 July 2023, pp 2, 3.

¹³⁵ While many developers operate under a corporate structure, it is possible that some developers are sole traders or ‘mum and dad’ investors or other individuals, such as those investing through self-managed superannuation funds or small companies.

¹³⁶ $25\% \times 10 = 2.5$. Under the Bill, this figure would be rounded to 3.

to the development.¹³⁷ For these reasons, it is clear that the Bill does not have sufficient regard to the rights and liberties of individuals.

Committee comment

As the committee previously stated, we believe this Bill contains a not insubstantial breach of fundamental legislative principles by introducing a subsequent Bill that would require developers to transfer at least 25 per cent of the dwellings or lots of certain developments to the state with no consideration or compensation.

3.7 Human Rights Act – property rights

The HRA protects fundamental human rights drawn from international human rights law.¹³⁸ Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

We considered the Bill in the context of property rights. Section 24(2) of the HRA provides that a person must not be arbitrarily deprived of their property.¹³⁹

While the Bill does not directly provide for the deprivation of property, it would oblige the Minister to introduce a Bill (subsequent Bill) within 2 months of the date of the assent of this Bill that would mandate the transfer of at least 25 per cent of dwellings or lots for residential construction projects or residential subdivision projects comprising 10 or more dwellings/lots.

Section 24(2) of the HRA is breached when the following criteria are met, and the limitation is not demonstrably justified under section 13 of the HRA:

1. the interest interfered with is a person's 'property'
2. the interference amounts to a 'deprivation' of the person's property
3. the deprivation is 'arbitrary'.¹⁴⁰

The Bill satisfies the first 2 of these criteria in a straightforward manner:

1. the interests interfered with are land and dwellings – these are 'real' property¹⁴¹
2. the forced transfer of property from developers to the state would amount to a deprivation of property.¹⁴²

The third criteria and the application of the test in section 13 of the HRA are discussed together below.

The statement of compatibility asserts the deprivation is not arbitrary:

While imposing inclusionary zoning may amount to an indirect diminution of a developer's property rights as a condition of conducting its extremely lucrative and privileged business, it is not an arbitrary deprivation, particularly in the context of mass housing stress and homelessness.¹⁴³

¹³⁷ See Planning Act, s 65.

¹³⁸ The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

¹³⁹ HRA, s 24(2). The provision does not, however, provide a right to compensation: Human Rights Bill 2018, explanatory notes, p 22.

¹⁴⁰ Kylie Evans and Nicholas Petrie, *Annotated Queensland Human Rights Act*, Lawbook Co, 2023, p 208.

¹⁴¹ As opposed to 'personal' property. See, for example, Australian Law Reform Commission, 'Definitions of property', <https://www.alrc.gov.au/publication/definitions-of-property/>.

¹⁴² See Kylie Evans and Nicholas Petrie, *Annotated Queensland Human Rights Act*, Lawbook Co, 2023, p 208.

¹⁴³ Statement of compatibility, p 4.

After outlining problems in the housing sector, the statement of compatibility concludes that the provision of public housing by developers outweighs the rights of developers.¹⁴⁴

The actual position is less clear than that indicated in the statement of compatibility. If the deprivation of property is arbitrary, even though the purpose of the limitation on property rights is worthy and would likely enhance certain human rights, it does not necessarily mean that the appropriate balance has been reached between the importance of the purpose of the limitation and the importance of preserving the human right.¹⁴⁵

If enacted, the Bill and subsequent Bill could deter developers from undertaking certain residential construction or subdivision projects, resulting in fewer dwellings being built in Queensland. This could mean that the Bill does not achieve its objectives. It could also result in more people not having their housing needs met because Queensland does not just need more public housing, it needs more dwellings for other Queenslanders too.¹⁴⁶ The Bill could also result in increased house prices if developers pass on even some of the added costs to the purchasers of the other lots or dwellings in developments. Therefore, the proposed limitation on property rights in this Bill may actually reduce access to housing, potentially affecting the right to housing.

One of the factors that section 13 of the HRA provides may be relevant in deciding whether a limit on a human right is reasonable and justifiable is whether there are any less restrictive and reasonably available ways to achieve the purpose of the limitation. As noted in this report, there are other possible options, including but not limited to:

- Incentives could be provided to developers to lessen the limitation on their property rights but still achieve the purposes of the Bill. These could include fast track approvals and rights to build at higher densities.¹⁴⁷
- The primary objective of the Bill may be able to be achieved more successfully if developers could provide cash in lieu of dwellings because the state may be able to fund more than one more modest dwelling with the cash equivalent of a luxury dwelling.¹⁴⁸

While it would result in the transfer of less property to be used for public housing, the limitation on developer's property rights could be lessened by delaying the commencement date of the scheme or by including transitional provisions in the Bill or subsequent Bill. This would mean that projects that have already commenced, but will not be completed until on or after 1 July 2024, are not impacted.

Committee comment

The committee recognises that inadequate housing can impact a person's rights. However, the approach taken in the Bill would place an unreasonable requirement on developers to transfer a significant percentage of certain projects to the state without any compensation, which from a human rights perspective, could be seen as being arbitrary.

The requirement may make some projects financially unviable and mean that in some instances, dwellings would not be built. In addition, the impact on developers with projects already underway but which will not be completed until on or after 1 July 2024 would be significantly more as the costs for the mandatory transfer would not have been factored into their project costings. We are therefore

¹⁴⁴ Statement of compatibility, p 4.

¹⁴⁵ See HRA, s 13(2)(g).

¹⁴⁶ See for example, University of Queensland, 'A perfect storm': UQ experts have their say on the QLD housing crisis, *UQ News*, October 2022, <https://stories.uq.edu.au/news/2022/uq-experts-have-say-on-qld-housing-crisis/index.html>; Andreas Nicola, 'Qld rental crisis forcing more people to live in cars, tents', *Courier Mail*, 10 April 2023, <https://www.couriermail.com.au/news/queensland/qld-rental-crisis-forcing-more-people-to-live-in-cars-tents/news-story/a5d5b0a884f637a70eb69583d3b5219c..>

¹⁴⁷ See for example, AHURi, 'Understanding inclusionary zoning: utilising land use planning systems to deliver affordable housing'.

¹⁴⁸ It would appear from the secondary objective of the Bill that the dwellings are to be retained by the State.

of the view that the appropriate balance between the importance of the limitation and the importance of preserving the human right has not been achieved.

Furthermore, we note that when deciding whether a limit on a human right is reasonable and justifiable, consideration should be given to whether there are any less restrictive and reasonable available ways to achieve the purpose of the limitation. As discussed within this report, there are a number of options available that have the potential to increase public housing stock while not impeding on property rights.

We therefore conclude that the Bill arbitrarily deprives developers of their property and that the limitation on their property rights is not reasonable and justifiable, having regard to section 13 of the *Human Rights Act 2019*.

Appendix A – Submitters

Sub #	Submitter
001	Form A or Variation of Form A
002	Name Withheld
003	Kurilpa Futures
004	Noosa Council
005	Queensland Council of Social Service
006	Property Owners' Association of Queensland
007	Housing Industry Association
008	Livingstone Shire Council
009	Community Housing Industry Association Queensland
010	Planning Institute Australia
011	Civity
012	Urban Development Institute of Australia Queensland
013	Strata Community Association (Qld)
014	BHC Creating liveable Communities
015	Local Government Association of Queensland Ltd
016	Brisbane Residents United
017	Student Accommodation Association
018	Property Council of Australia
019	Q Shelter
020	National Shelter

Appendix B – Officials at public briefing

22 May 2023

- Dr Amy MacMahon MP, Member for South Brisbane

Appendix C – Witnesses at public hearing

Livingstone Shire Council

- Melissa Warwick, Principal Strategic Planner
- Russell Claus, Economic Development (Placemaking) Strategist, Economy & Places

BHC Creating Liveable Communities

- Rebecca Oelkers, Chief Executive Officer

Community Housing Industry Association Queensland

- Wendy Hayhurst, Chief Executive Officer

Strata Community Association (Qld)

- Jessica Cannon, Advocacy Director
- Kristian Marlow, Policy and Media Officer

Property Council of Australia

- Jen Williams, Queensland Executive Director
- Jess Caire, Deputy Executive Director, Queensland Division

Property Owners' Association of Queensland

- Roslyn Wallace, Secretary

Planning Institute Australia

- Shannon Batch, Queensland President

QCOSS

- Ryan O'Leary, Manager – Community Engagement

Q Shelter

- Fiona Caniglia, Executive Director

Urban Development Institute of Australia - Queensland

- Kirsty Chessher-Brown, Chief Executive Officer
- Anna Cox, Director of Policy, Strategy and Regional Services

Appendix D – Acronyms and abbreviations

Accord	National Housing Accord
Bill	Planning (Inclusionary Zoning Strategy) Bill 2023
CHIA	Community Housing Industry Association Queensland
CHPs	community housing providers
committee	State Development and Regional Industries Committee
department/Department of Housing	Department of Communities, Housing and Digital Economy
DSDILGP	Department of State Development, Infrastructure, Local Government and Planning
GFA	gross floor area
HRA	<i>Human Rights Act 2019</i>
LGAQ	Local Government Association of Queensland
MIZ	mandatory inclusionary zoning
OQPC	Office of the Queensland Parliamentary Counsel
the Plan	National Housing and Homelessness Plan
Planning Act	<i>Planning Act 2016</i>
Property Council	Property Council of Australia
QCOSS	Queensland Council of Social Service
subsequent Bill	A Bill that the Queensland Government will be required to introduce into Parliament within 2 months of this Bill's ascent, which will include the inclusionary zoning strategy based on the policy outlined in this Bill.
UDIAQ	Urban Development Institute of Australia Queensland