

21 May 2024

Commencement of HAAPOLA Feedback
Planning Group
Department of Housing, Local Government, Planning and Public Works
GPO Box 690
Brisbane QLD 4001

Via email: planning4housing@dsdilgp.qld.gov.au

Dear Planning Group,

Housing Availability and Affordability (Planning and Other Legislation Amendment) Act 2024

Thank you for the opportunity to provide feedback on the proposed amendments to the Planning Regulation 2017, the Minister's Guidelines and Rules (MGR) and the Development Assessment Rules (DA Rules) to support the implementation of the Housing Availability and Affordability (Planning and Other Legislation Amendment) Act 2024 (the Act).

The Property Council of Australia is the leading advocate for Australia's largest industry - property, which represents 13% of Australia's GDP, employs 1.4 million Australians (more than mining and manufacturing combined) and generates \$72 billion in tax revenues. Here in Queensland, we are proud to have over 400 member companies from across the property industry, including residential, community housing providers, builders, town planners, project managers, and legal professionals to name a few.

On behalf of our members, we congratulate the state government on the release of Homes for Queenslanders plan in response to the ongoing housing crisis. We further acknowledge the planning amendments proposed to support the Homes for Queenslanders plan, including the Act. To ensure the Act helps to deliver more homes faster, we provide the following feedback for your consideration.

State Facilitated Developments

We note the intent of the Act is to "to improve the planning framework's response to housing supply challenges". To succeed in achieving this objective it is important the Act is flexible and dynamic to respond to market conditions and adequately empowers the Minister to prioritise approval of more homes.

In keeping with this intent, we note the criteria for declaring a State Facilitated Development (SFD) provides discretion to the state government to determine when an application meets the requirements of an SFD. We further note the amendments allow an SFD to be declared at any time during the application process (before an application is made, after an application is made but

before it is decided, after an application is decided) and proposes short timeframes to receive, assess and approve an SFD.

While we acknowledge this flexibility and shortened timeframes are positive and support the objectives of the Act, it will be critical for the state government to adequately resource the SFD team in order to achieve the desired outcomes of the Act.

In line with this need for sufficient resources we acknowledge the establishment of the SFD team to prioritise the assessment of SFD applications. While we applaud the establishment of the SFD team, given the current lack of planning resources across the state, it will be important to ensure the team is sufficiently resourced and its establishment does not reduce other planning resources, including those within Councils.

Affordable housing

We note the criteria for SFDs include a focus on the provision of affordable housing. Given the ongoing market conditions, the Property Council has consistently cautioned against adopting an overly prescriptive or rigid approach to requiring affordable housing that would risk the viability of projects.

Our feedback in response to the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill in October 2023 highlighted the need for further clarity around what is considered affordable housing. In response we note the inclusion of the below definition of affordable housing in the draft Regulations.

43C Criteria for affordable housing component—Act, s 65A

For section 65A(3) of the Act, definition affordable housing component, paragraph (b), the component of development must include:

- (a) housing provided by a registered provider to an individual for residential use; or*
- (b) housing provided as part of a program, funded by any of the following entities, to support the provision of affordable housing—*
 - (i) a public sector entity under the Public Sector Act 2022, section 8;*
 - (ii) a local government;*
 - (iii) the State;*
 - (iv) the Commonwealth; or*
- (c) housing sold or rented below the typical market value on the basis of its type, composition, method of construction, size or level of finish.*

We welcome the inclusion of this definition and the flexibility it provides potential applicants in qualifying for the SFD process. Providing numerous methodologies for applicants to deliver affordable housing will allow them to design a project that meets market and locational conditions, ultimately helping to deliver more homes for Queenslanders.

While we welcome this flexibility and believe it will facilitate greater housing choice, we acknowledge some proponents – including Community Housing Providers – may want greater detail regarding what qualifies as affordable housing. One way of providing that certainty while still allowing flexibility is for the government and industry to work together to develop a suite of guidelines and project examples that can be used to guide industry. We understand the state government is currently undertaking an Expression of Interest (EOI) process for potential SFD projects, this process provides an opportunity to not only identify potential SFD projects, but to use them to provide more detail and examples to guide future SFD applications.

Yes in Faith's Back Yard

The Property Council of Australia joined with other industry associations in writing to the government regarding the opportunity of delivering more housing through the 'Yes in Faith's Back Yard (YIFBY) initiative. The YIFBY concept proposes supporting delivery of housing on land owned by religious organisations through a series of simple amendments to the Planning Act 2016. As outlined in our correspondence, the amendments would remove potential planning barriers to provide a clear pathway to delivering more social and affordable housing.

The Property Council believes that an amendment to the Act, which proposes amendments to the Planning Act and Regulations, is an ideal opportunity to progress the necessary amendments to support the YIFBY concept and we would be happy to work with government to progress these amendments to support the availability of well-located affordable homes across Queensland.

Development Control Plans

While the Property Council is largely supportive of the proposed amendments contained within the Act and the draft Regulations, it has been brought to our attention that some of the proposed amendments would potentially result in significant impacts on the existing Kawana Waters and Mango Hill development control plans (DCPs). In effect, the amendments would result in prohibited development in these DCPs becoming prohibited development under the Planning Act 2016, effectively removing the original development rights under these DCPs.

Under these historical DCPs prohibited development can be accommodated via an impact assessable application, providing the opportunity for an applicant to work with Council to design a project that delivers more homes, while meeting the expectations of the community. Essentially this opportunity would be removed under the proposed amendments in the draft Regulation, removing existing development rights and making it more difficult to deliver much needed houses.

To avoid this unintended consequence, we believe the following changes should be made to the amendment to the Planning Regulation:

- a) delete proposed section 15A.

- b) alter the references in sections 68L and 68M from prohibited development to assessable development for which impact assessment is required.

Potential drafting errors

The Property Council has identified several potential drafting errors in the draft Regulation and Development Assessment Rules, as outlined below.

Draft Regulation

The table under section 68L appears to contain an error in relation to 'conditional permitted development'. It cannot require code assessment if it is accepted development. It is assumed that 'accepted development' should be a reference to 'assessable development'.

Draft Development Assessments Rules

Chapter 2, Part 2, section 8 – all references to section 6 should be changed to refer to section 7 (i.e. it appears the cross-referencing is incorrect).

For Chapter 2 (Applications for State facilitated development): We were unable to find an equivalent to Chapter 1, Part 6, (which is about changes to an application). We assume this may be an omission.

Footnote 31 – We believe the reference to section 21 should be a reference to section 19.

It is noted Chapter 2, Part 5, section 19.1 refers to a Confirmation notice but not notification notice.

Schedule 1, section 2(b), the reference to Chapter 2, Part 5 does not appear to be correct.

Schedule 3, section 2, public notice requirements may be set by the chief executive in a confirmation notice or a notification notice.

Schedule 4, definition of Confirmation notice, paragraph (d)(i) should refer to the assessment manager or the chief executive.

Schedule 4, definition of Current period should refer to 'chapter 2, section 20', not 'chapter 2, section 22'.

Schedule 4, definition of Further advice, should refer to 'chapter 2, section 22', not 'chapter 2, section 25'.

Schedule 4, definition of Further agreed period, should refer to 'chapter 2, section 21.1', not 'chapter 2, section 23.1'.

Thank you for the opportunity to provide feedback. If you require any further information or have any questions, please do not hesitate to contact me on JCaire@propertycouncil.com.au or 0449 181 366.

Yours sincerely,

A handwritten signature in black ink that reads "Jess Caire". The script is cursive and elegant, with the first letters of each name being capitalized and prominent.

Jessica Caire
Queensland Executive Director