

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

Statement of Compatibility

FOR

Amendments Moved During Consideration In Detail By The Honourable Meaghan Scanlon MP, Minister for Housing, Local Government and Planning and Minister for Public Works

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, the Honourable Meaghan Scanlon MP, Minister for Housing, Local Government and Planning and Minister for Public Works, make this statement of compatibility with respect to the amendments to be moved during consideration in detail of the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023 (the Bill).

In my opinion, the amendments to be moved during consideration in detail of the Bill are compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Amendments

The objective of the Bill is to:

- amend the *Planning Act 2016* (Planning Act) to improve Queensland’s planning framework’s response to housing challenges; and
- make operational and process improvements to ensure the framework is working as efficiently as possible.

The objectives of the amendments to the Bill are to:

- amend drafting to replace ‘State facilitated applications’ with ‘State facilitated development’ for greater clarity;
- allow the chief executive to determine the requirements for public notification for a State facilitated development application made to the chief executive;
- allow for the chief executive to set and extend the currency period for a development approval given or changed by the chief executive for State facilitated development;
- allow for an affordable housing condition to be imposed on a development approval;

- clarify that a declaration of a State facilitated development cannot be made to change the decision of the Planning and Environment Court;
- limit local governments from including assessment benchmarks for Queensland heritage places and for areas adjoining a Queensland heritage place in their planning schemes and from assessing applications for development on or adjoining Queensland heritage places;
- for the taking of land by the State, require that the Minister consults with the public sector entity in whom the land will be vested;
- ensure that the new Ministerial direction power includes the ability to direct a local government about not including an assessment benchmark about the effect or impact of development on a Queensland heritage place;
- provide for how development control plans apply to development and allow for a regulation to transition a category of development in a development control plan to a category of assessment under the Planning Act, including for prohibited and accepted development;
- omits the urban investigation zone provisions; and
- makes minor corrections to drafting.

Amendments to other statutory instruments including the Planning Regulation 2017 (Planning Regulation) and Development Assessment Rules (DA Rules) are necessary to give effect to some of the changes proposed in the Bill. These amendments will be progressed post passage of the Bill and are intended to commence to coincide with relevant provisions.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3, HR Act)

Amendments to the Bill to replace references to ‘State facilitated applications’ with references to ‘applications for State facilitated development’ and to clauses 2 and 74 (apart from the insertion of new ss 106L(5) and 106IA of the Planning Act) to make minor corrections to drafting, provide clarification and do not change the human rights considerations previously addressed in the Statement of Compatibility that was tabled with the Bill.

Amendment to clause 74 to clarify that it is not the intent for the Minister to be able to override the decisions of the Planning and Environment Court through declaring applications for State facilitated development, do not limit or interfere with human rights.

Amendment to clause 43 of the Bill, which inserts s 263A in the Planning Act, provides that the State may only take land that is to vest in a public sector entity, other than the department, if, in addition to the matters in ss 263A(2)(a)(i) and (ii), the Minister is satisfied that the public sector entity has been consulted about the taking and vesting of land. This amendment does not change the human rights considerations previously addressed in the Statement of Compatibility that was tabled with the Bill.

Amendments to omit clauses 62 and 63, part of clauses 74 and 76 and Part 7 of the Bill which provide for and relate to land included in the urban investigation zone do not limit or interfere with human rights.

In my opinion, the human rights engaged by the amendments to be moved during consideration in detail are:

- section 21 – freedom of expression;

- section 23 – right to take part in public life; and
- section 24 – property rights
- section 31 – right to a fair hearing

The clauses of the Bill that are relevant to these rights are:

- Clause 28A – Insertion of new s 65A in the Planning Act to enable a regulation to provide that a development condition may be imposed on particular development approvals about the provision of an affordable housing component on the premises the subject of the approval.
- Clause 60 – Insertion of new chapter 8, part 9, division 2 to extend the the application of s 360 of the Planning Act so it applies to all development in a development control plan area.
- Clauses 70A and 75A – Insertion of new s 87A in the Planning Act to enable the chief executive to assess and decide an extension application for an approval for State facilitated development. Schedule 1 will be amended to remove the right to appeal the chief executive’s decision under s 87A.
- Clause 74 – Insertion of new chapter 3, part 7A of the Planning Act which inserts new s 106IA, to enable the chief executive to determine public notification requirements for applications made to the chief executive for State facilitated development. Amendment of clause 74 to allow the chief executive to determine the currency period for a State facilitated development approval through the decision notice.
- Clause 94 – Insertion of new s 26A to expand the scope of the new Minister’s direction powers to enable the Minister to direct a planning scheme amendment for consistency with s 43.
- Clause 96 – Amendment of s 43 of the Planning Act to prevent a local categorising instrument from including an assessment benchmark about the effect and impact of development on the cultural heritage significance for a Queensland heritage place even if it is a local heritage place.
- Clause 96E – Insertion of new chapter 7, part 4D to limit an assessment manager (other than the chief executive) from assessing and imposing a condition about the effect and impact of development on the cultural heritage significance of a Queensland heritage place even if it is also a local heritage place.

If human rights may be subject to limitation if the Bill with these amendments is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (HR Act, s 13)

The Bill will potentially limit (or interfere with) the identified human rights:

- section 21 – freedom of expression
- section 23 – right to take part in public life
- section 24 – property rights
- section 31 – right to a fair hearing

Section 21 – freedom of expression

(a) the nature of the right

Section 21 of the HR Act recognises that every person has the right to hold an opinion without interference and has the freedom of expression, through speech, art, writing (or other forms of expression) and to seek out and receive the expression of others' opinion. This includes making decisions in relation to the provision of information or restrictions on access to information.

Extension Applications – State facilitated development

Amendment 16 amends the Bill to insert a new clause 70A which will insert a new s 87A in the Planning Act. This amendment will allow the chief executive to assess and decide extension applications to extend the currency period for a development approval given or changed by the chief executive for State facilitated development. Amendment 33 inserts a new clause 75A in the Bill which will amend schedule 1, table 1, item 3 of the Planning Act, to remove the right to appeal to the Planning and Environment Court (P&E Court) against a decision by the chief executive under s 87A, which therefore limits a person's right to freedom of expression.

Public Notification– State facilitated development application

Amendments 24 and 28 amend clause 74 of the Bill to amend the public notification requirements for State facilitated development. Clause 74 now provides for the chief executive, not the Minister as part of the declaration, to have the ability to determine requirements, if any, for notifying and consulting with the public about an application made to the chief executive for State facilitated development. Clause 74 now provides that s 53 of the Planning Act, which requires public notification of and provides for submissions to be made in respect of, applications for impact assessable development or variation requests, would not apply to an application made to the chief executive for State facilitated development. Under the new provisions, the chief executive will have the ability to set the requirements for public notification even if public notification of the application would not have been required under s 53 of the Planning Act. The chief executive could also remove the requirement for public notification for applications, therefore limiting people from expressing their opinions about State facilitated development. Section 53 of the Planning Act will continue to apply to applications for State facilitated development made to the original decision-maker before the application is declared to be an application for State facilitated development.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Extension applications – State facilitated development

The purpose of this amendment is to provide the chief executive with the ability to assess and decide an extension application for State facilitated development, to allow for State priorities (for example, affordable housing) to be delivered without the risk of delays as a result of appeals to the P&E Court. The removal of appeal rights is consistent with other similar forms of reserve Ministerial powers, such as Ministerial call in powers. Limited review rights, for example for jurisdictional error as provided for in s 231(1) of the Planning Act, may still be available. Ensuring that development that is a priority to the State is delivered expeditiously, is compatible with a free and democratic society.

Public Notification – State facilitated development applications

The purpose of the amendment is to provide the chief executive with the ability to consider factors other than those stated in s 53 of the Planning Act, such as the impact of the development or local context, in determining if public notification is suitable for applications made to the chief executive for State facilitated development. This is also consistent with the requirement that the chief executive consider broader factors than might be considered by another assessment manager when assessing development applications under the Planning Act.

This process provides for communities to be publicly notified of applications that may not be ordinarily subject to public notification (for example, code assessable development) and ensures that development that the chief executive considers does not require public notification is streamlined and expedited. This will allow the State's identified priorities (for example, affordable housing) to be delivered without delays. Applications for State facilitated development made to the original decision-maker before the application is declared to be an application for State facilitated development will continue to be publicly notified as required by s 53 of the Planning Act to minimise possible conflict with any public notification which may have already occurred. Ensuring that development that is a priority to the State is delivered expeditiously, is compatible with a free and democratic society based on human dignity.

- (c) the relationship between the limitation, and its purpose, including whether the limitation helps to achieve the purpose

Extension applications – State facilitated development

The limitation on appeals for extension applications for development approvals for State facilitated development achieves the purpose of ensuring that if an extension approval is granted, the State facilitated development approval does not lapse and can continue to be acted on without delay.

Public Notification – State facilitated development applications

The amendment achieves its purpose by providing the chief executive with flexibility to determine if public notification is required for an application made to the chief executive, based on factors which are not limited to the level of assessment and the type of application, as is currently the case under s 53 of the Planning Act.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose

Extension applications – State facilitated development

Limiting appeal rights against a decision of the chief executive on an extension application for development approvals for State facilitated development is the only way to ensure that extension applications to extend the currency period are not subject to further delays, which hinder the delivery of State identified priorities such as affordable housing.

Public Notification – State facilitated development applications

Changing the operation of public notification is the only way to provide the chief executive with greater flexibility in deciding the requirements for public notification. The chief executive's ability to set public notification requirements has been limited to only apply to applications made to the chief executive. Applications that have been made to the original

decision-maker (for example, the local government) before the application is declared to be an application for State facilitated development, will continue to use the existing public notification process, to minimise any potential conflict.

(e) the balance between the importance of the purpose and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Extension applications – State facilitated development

In my opinion, the proposed amendments strike a fair balance between the benefits gained by the public through expedited delivery of State identified priorities, and the limitation on the right to freedom of expression.

Public Notification – State facilitated development applications

In my opinion, the proposed amendments to allow the chief executive to decide on the requirements for public notification strike a fair balance between the benefits gained, such as getting development that is a priority to the State on the ground, faster, where public notification is not required, and the limitation on the right to freedom of expression.

(f) any other relevant factors

Nil.

In my opinion, the Bill is compatible with the right to freedom of expression because the limitation on the right is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

Section 23 – right to take part in public life

(a) the nature of the right

Section 23 of the HR Act states that every person in Queensland has the right, and is to have the opportunity, without discrimination to participate in the conduct of public affairs directly or through freely chosen representatives.

Public Notification – State facilitated development application

As the proposed amendments to the Bill allow for the chief executive to remove the requirements for State facilitated development applications, made to the chief executive, to be publicly notified and may remove a member of the public's ability to make a submission in respect of the development in the manner described above in the discussion of the right to freedom of expression, they may limit the right of community members to take part in public life.

Minister's powers to direct amendments to the planning scheme in respect of Queensland heritage places and associated amendments

Amendments, including amendments 35 to 37, to be moved during consideration in detail of the Bill amend the new s26A of the Planning Act inserted by Clause 94 to also allow the Planning Minister to direct a local government, without consultation, to amend its planning scheme to be consistent with s 43(5) of the Planning Act. Clause 96 amends s 43(5), to include a new s 43(5)(d) which provides that a local categorising instrument may not include an assessment benchmark about the effect or impact of development on the cultural heritage significance of a Queensland heritage place even if it is also a local heritage place. Clause 96

is also amended to clarify what is meant by cultural heritage significance. The amendments will also insert new clause 96E which inserts a new s 275ZI in the Planning Act. Section 275ZI will prevent an assessment manager, other than the chief executive, from assessing or imposing a condition dealing with the impact of impact assessable development on the cultural heritage significance of a Queensland heritage place, even if that place is also a local heritage place, if the development is carried out on a Queensland heritage place or is for a material change of use of premises carried out on a lot adjoining a lot which is or contains a Queensland heritage place or is for a material change of use of premises on a lot which contains a Queensland heritage place but is not carried out on the place. This provision also clarifies that any development condition imposed must not be inconsistent with a development condition about the Queensland heritage place, that may be imposed by the State Government.

Communities may expect local planning schemes to be amended and decided by their local government, including to reflect matters relating to local heritage places, rather than the Planning Minister. As the local government cannot make representations to the Planning Minister about the direction and will be unable to assess and make decisions about the impacts of development on a local heritage place which is also a Queensland heritage place, this amendment may limit the right the participate in the conduct of public affairs through chosen representatives.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Public Notification amendment – State facilitated development application

The purpose of the limitations resulting from the public notification amendments for State facilitated development applications is described above in the discussion of the right to freedom of expression.

Minister’s power to direct amendments to a local planning scheme in respect of Queensland heritage places and associated amendments

The purpose of the amendment is to ensure consistency between the planning scheme and the requirements under the Planning Act, thereby providing certainty to communities and applicants about what planning controls apply to the land and what planning controls may be assessed and decided by the local government. The purpose of the amendment is also to remove the duplicate assessment relating to Queensland heritage places by the State and local government, resulting in resource efficiencies and to ensure that assessment of development on or adjoining a Queensland heritage place (including a Queensland heritage place that is also a local heritage place) is carried out by the chief executive against the State development assessment provisions. However, the local government may continue to assess development on a Queensland heritage place that is also a local heritage place, where the cultural heritage significance for the Queensland heritage place, is not the same as the cultural heritage significance for the local heritage place.

Currently, some local governments prescribe assessment benchmarks for all heritage places, including Queensland heritage places, and undertake assessment and make decisions about the potential impact of development on these places. The State, through the chief executive, is the appropriate assessment authority for assessing the potential impact of development on the cultural heritage significance of a Queensland heritage place (including a Queensland heritage

place that is also a local heritage place) as the conservation of the cultural heritage significance of Queensland heritage places is a State interest. These amendments remove the potential for inconsistent decision-making which might lead to possible court proceedings and associated costs for the State, local governments and applicants.

(c) the relationship between the limitation, and its purpose, including whether the limitation helps to achieve the purpose

Public Notification amendment – State facilitated development application

The reasons the amendment achieves its purpose are described in the discussion of the right to freedom of expression.

Minister’s power to direct amendments to a local planning scheme in respect of Queensland heritage places and associated amendments

A local government that is directed by the Planning Minister to amend their planning scheme to omit assessment benchmarks relating to the effect or impact of development on the cultural heritage significance of premises that are a Queensland heritage place where development is carried out on or is adjoining a Queensland heritage place, will be required to comply with the direction.

A local government will also be unable to assess the impacts of a development on the cultural heritage significance of premises that are a Queensland heritage place or adjoining a Queensland heritage place, and therefore, the amendments will achieve their purpose.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

Public Notification amendment – State facilitated development application

The reasons why the amended provisions are the least restrictive way reasonably available to achieve the purpose of the limitation are described in the discussion of the right to freedom of expression.

Minister’s power to direct amendments to a local planning scheme – Queensland heritage place and associated amendments

The alternative to a Ministerial direction power is to allow local governments to amend their local planning schemes at their own discretion. This could take considerable time resulting in ongoing or long-term inconsistency between the local planning schemes and State policy and legislative requirements. This could also result in possible court actions and associated costs for State and local governments and applicants, for applications received about Queensland heritage places. Further, this power is only intended to be used when all other options have been exhausted and in practice, when exercising this power, the State will work with local governments to amend their scheme.

The provisions will remove duplicate assessment of Queensland heritage places, which ensures that the cultural heritage significance of a Queensland heritage place continues to be assessed by the chief executive and similarly the cultural heritage significance of a local heritage place, which is not a Queensland heritage place, continues to be assessed by the local government. I am satisfied that there are no less restrictive ways reasonably available to achieve the purpose.

(e) the balance between the importance of the purpose and the importance of preserving the

human rights, taking into account the nature and extent of the limitation

Public Notification amendment – State facilitated development application

In my opinion, the proposed amendments strike a fair balance between the benefits gained by the chief executive being able to consider factors not limited to the level of assessment and type of application, in determining whether a development requires public notification and the limitation on the right to freedom of expression.

Minister’s power to direct amendments to a local planning scheme in respect of Queensland heritage places and associated amendments

The proposed amendments to the Minister’s power to direct local governments to amend their planning schemes to omit heritage benchmarks for Queensland heritage places strikes a fair balance between the benefits gained by ensuring planning controls comply with the Planning Act so that communities and applicants understand what planning controls apply to land; and the limitation on taking part in public life that may result from this amendment.

The amendments to remove the ability of assessment managers, other than the chief executive, to consider the of impact of development on the cultural heritage significance of a Queensland heritage place, strikes a fair balance between the benefits gained by removing the duplicate assessment of Queensland heritage places by both State and local governments and any limitation on taking part in public life that may result from this amendment. This amendment allows for the impacts of development on cultural heritage significance of a Queensland heritage place to continue to be assessed by the chief executive, against the provisions set out in the State development assessment provisions. Furthermore, if the development is categorised as impact assessable development under the planning scheme, communities will continue to have the ability to have their say about the proposed development and have appeal rights.

(f) any other relevant factors

Nil.

In my opinion, the amendments to be moved during consideration in detail for the Bill are compatible with the right to participate in the conduct of public affairs because the limitations on the right are reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

Section 24 – property rights

(a) the nature of the right

Section 24 of the HR Act provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person’s property.

Currency Period

Amendment 30 amends Clause 74 of the Bill to insert a new s 106L(5) of the Planning Act. This amendment allows the chief executive to set and change the currency period for State facilitated development approvals through the decision notice. The default period currently prescribed in the Planning Act, will continue to apply, where the chief executive to does not set the currency period for all or part of the development approval of an application for a State

facilitated development. The proposed change may result in the chief executive setting a currency period which is less than the default period currently prescribed in s 85 of the Planning Act in the approval. For development which is a material change of use or a reconfiguration of a lot, the proposed change will reduce in the default currency period may therefore affects the property rights of individuals who own or are entitled to develop land on to which the State facilitated development approval applies, as it may set a reduced the period during which they can undertake the approved development on their land.

Ability to condition the provision of an affordable housing component

The amendment includes a new Clause 28A of the Bill which allows a regulation to provide that a development condition may be imposed on a development approval for State facilitated development or a development approval given for an application which specifically proposes the provision of an affordable housing component and that complies with the regulation. The regulation will state the parameters for the condition that can be imposed. The new provision also provides that an affordable housing component is a component of development that involves housing that is affordable for particular types of households and that complies with the criteria in the regulation. This amendment may affect property rights of individuals that own or are entitled to develop land that is the subject of the development approval on which the affordable housing component condition is proposed to be imposed, as it may adjust (limit) the development that may be undertaken on the land.

Development Control Plans (DCP)

Amendments 3 to 7 amend clause 60 of the Bill to expand the scope of the new s 360, which currently only applies to applications, made after commencement, for development approval for development on premises in a DCP area. This limitation will not apply under the amended s 360. The amended s 360 will allow for a regulation to, amongst other things, prescribe anything necessary or convenient to be prescribed for interpreting or applying a DCP, including transitioning a category of development or assessment in a DCP to a category of assessment under the Planning Act for all development in a DCP, not only development the subject of an application. For example, a regulation including the *Planning Regulation 2017* (Planning Regulation), could prescribe how a DCP applies to accepted development and prohibited development on premises in a DCP area).

In *JH Northlakes Pty Ltd v Moreton Bay Regional Council* [2022] QPEC 18, the Planning and Environment Court held that development in DCP areas must use the Integrated Development Assessment System (IDAS) application process created under the repealed *Integrated Planning Act 1997* (IPA). This judgement called into question the validity of approvals given since the repeal of IPA.

This amendment may change the development assessment process for development on premises in a DCP area. Therefore, this amendment may affect the property rights of individuals that own or are entitled to develop land in a DCP area, as it may limit the development that may be undertaken on the land.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Currency Period

The provisions allow the chief executive to set appropriate time frames for the delivery of development that is a priority to the State, such as increased housing supply, particularly affordable housing, in response to the current housing challenges. This amendment is consistent with the current provisions of the Planning Act which allow a referral agency to set a currency period for a development approval. It is also consistent with a free and democratic society as it may assist in the supply of development for which there is a social need, such as affordable housing and the State facilitated development pathway continues to allow for applications to be made to extend the currency period.

Ability to condition the provision of an affordable housing component

The provisions aim to enable development conditions to be imposed for an affordable housing component. In the absence of this ability to condition the provision of an affordable housing component, the delivery of this type of housing development may be constrained, worsening the current housing challenges. This amendment is consistent with a free and democratic society based on human dignity, equality and freedom.

DCPs

Modernising the operation of DCPs within the current planning framework under the Planning Act provides greater certainty to the applicants and community with greater consistency in the types of development identified as accepted or prohibited development. The amendments are consistent with the principles of a free and democratic society as it allows for development that benefits from being accepted development in the Planning Regulation to also apply in DCP areas. While it may limit some development in a DCP area (for example, if development was identified as prohibited development), this is consistent with State policy and legislative requirements which apply outside DCPs (such as clearing native vegetation).

- (c) the relationship between the limitation, and its purpose, including whether the limitation helps to achieve the purpose

Currency period

The chief executive's ability to set a currency period for State facilitated development approvals will achieve its purpose by allowing for the delivery of priority development such as affordable housing, in appropriate timeframes.

Ability to condition the provision of an affordable housing component

The amendment achieves its purpose by allowing development conditions to be imposed which require the delivery of an affordable housing component.

DCPs

The expanded scope of new s 360 achieves its purpose by allowing for provision to be made for all development in a DCP, not only development the subject of an application.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose

Currency Period

Allowing the chief executive to set currency periods for development approvals for State facilitated development is the only way to enable the chief executive to set appropriate time

frames for development that is a priority to the State. Applicants will still be able to apply to extend the currency period for their approval.

Ability to condition the provision of an affordable housing component

Currently, a condition for an affordable housing component may not meet the requirements under s 65 of the Planning Act, which requires that the condition must be reasonable and relevant to the development or use of the premises. The amendment removes the requirement for a development condition for an affordable housing component to comply with s 65 and, prescribes that the condition must comply with criteria which is to be prescribed by the regulation. This amendment is aimed at creating greater certainty for community that the provision of an affordable housing component as part of a development approval is specifically contemplated by the Planning Act. These conditions may only be imposed on approvals for State facilitated development and for applications which already propose to include an affordable housing component.

DCPs

The amendment is the only way to modernise the operation of DCPs within the current planning framework under the Planning Act. This change will allow for development identified by the Planning Act as not requiring a development approval to also be afforded this benefit when located in a DCP area. This change also allows consistency with the rest of the State in protecting DCP areas from particular types of development (for example, clearing native vegetation).

- (e) the balance between the importance of the purpose and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Currency Period

In my opinion, the proposed amendment to allow the chief executive to set the currency period for a development approval for a State facilitated development strikes a fair balance between the benefits gained by the public through the chief executive setting appropriate time periods for the delivery of development that is a priority to the State, such as for affordable housing and any limitations on property rights associated with that time period.

Ability to condition the provision of an affordable housing component

In my opinion, this amendment is not an arbitrary deprivation of a person's property as the conditions may only be applied to a development approval which proposes an affordable housing component. Applicants for development approval have a change representation period which enables them to make representations to the assessment manager or the referral agency about changing the development approval during this period. This provides the applicant with the ability to negotiate alternative conditions to be imposed instead of a requirement for the provision of an affordable housing component. Therefore, this amendment strikes a fair balance between the benefits to the community in providing for an affordable housing component, and the limitations on the property rights of the owner or person entitled to development the premises the subject of the development approval.

DCPs

In my opinion, the proposed amendment strikes a fair balance between the benefits of contemporising the interpretation and application of DCPs, such as particular development not requiring an approval, and any limitations on property rights.

(f) any other relevant factors

Nil.

In my opinion, the Bill is compatible with the property rights stated in section 24 of the HR Act because the limitations on the right are reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

Section 31 – right to a fair hearing

(a) the nature of the right

Section 31 recognises that that a person has the right to have criminal charges or civil proceedings decided by a competent, independent and impartial court or tribunal following a fair, public hearing. As proposed amendment 33 to the Bill proposes to insert a new clause 75A in the Bill which will amend schedule 1, table 1, item 3 of the Planning Act, to remove the right to appeal to the P&E Court against a decision by the chief executive under s 87A in respect of an extension application for development approvals given or changed by the chief executive under the new part 6A, the amendment will limit an applicant's right to a fair hearing.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation resulting from the removal of the right to appeal a decision of the chief executive under s 87A is described above in the discussion of the right to freedom of expression.

(c) the relationship between the limitation, and its purpose, including whether the limitation helps to achieve the purpose

The reasons the amendment achieves its purpose are described in the discussion of the right to freedom of expression.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The reasons why the amended provisions are the least restrictive way reasonably available to achieve the purpose of the limitations are described in the discussion of the right to freedom of expression.

(e) the balance between the importance of the purpose and the importance of preserving the human rights, taking into account the nature and extent of the limitation

In my opinion, the proposed amendment strikes a fair balance between the benefits gained by the public through expedited delivery of State identified priorities, and the limitation on the right to a fair hearing.

In my opinion, the Bill is compatible with the property rights stated in section 31 of the HR Act because the limitations on the right are reasonable and demonstrably justifiable in

accordance with section 13 of the HR Act.

Conclusion

In my opinion, the amendments to be moved during consideration in detail of the Bill are compatible with human rights under the HR Act because they limit a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

MEAGHAN SCANLON MP
Minister for Housing,
Local Government and Planning
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