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24 January 2017

Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
BRISBANE QLD 4000

Email: ipnrc@parliament.qld.gov.au

Dear Sir/Madam

Brisbane City Council (Council) is pleased to provide a submission on the *Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016* (the Bill).

Council supports the proposal to bring forward some of the planning reforms in the *Planning Act 2016* to be implemented under the *Sustainable Planning Act 2009* (SPA), including the cost provisions in the *Planning and Environment Court Act 2016*, the increased penalties for various offences and the changes in respect of Temporary Local Planning Instruments, subject to some additional recommendations about this process.

In relation to the changes proposed that address recent court decisions concerning development approvals for building work, Council has some concerns which are outlined in the attached submission. In addition, Council had previously raised two issues which relate to the amendments.

- Firstly, Council was seeking changes in respect of the timing for the certifier giving notification to Council of an approval under sections 86, and 88 of the *Building Act 1975* (the Building Act). Proposed amendments and justifications have previously been addressed with the Deputy Premier.

- Secondly, section 578 of SPA provides that it is an offence to carry out assessable development without a permit. Council cannot seek action under section 578 against a land owner for carrying out assessable development if they have obtained a development permit from a certifier (for the building work assessable against the building assessment provisions), but not obtained a preliminary approval from Council.

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In respect of the first dot point, the current position under the Building Act is that a private certifier can approve a building development application and the building work can be carried out on the same day as the approval is granted. The practical implication of this provision is that the approval documents are provided to Council after the work is completed, but within the prescribed five day period. In these circumstances, Council does not become aware of the approval, and the related building work, until after the fact. By this time, Council's ability to address an unlawfully granted approval is limited or, in the case of demolition work, is rendered useless.

This was the case in respect of the demolition of three pre-1947 dwelling houses located at Power Street, Norman Park and Agars Street, Paddington where the dwelling house had been demolished prior to Council receiving the documents under section 86(1) of the Building Act.

Council is also concerned that changes to section 202 of the *Local Government Electoral Act 2011* (the Electoral Act) will expose local governments to unknown and unverifiable additional costs associated with conducting local government elections. The current wording of section 202 of the Electoral Act only requires local governments to pay for the costs directly incurred by the Electoral Commission Queensland whereas the proposed amendment means that local governments would also be liable for indirect costs.

Council's submission is further detailed in the attachment to this letter as well as the additional proposed amendments to sections 86 and 88 of the Building Act.

Council also seeks the opportunity to appear before the Parliamentary Committee hearings on the Bill, in order to put forward Council's position and to provide any necessary clarification.

Should you require any further information about Council's submission, please contact Ms Kate Humberdross, Urban Planner, City Planning and Economic Development, [redacted]

Yours sincerely

[redacted]

Colin Jensen
CHIEF EXECUTIVE OFFICER

Detailed Council comment and recommended changes to the *Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016*

Reference/Page Number	Comment	Recommended Change
***Building Act 1975* (the Building Act)**		
Clause 6, page 9, section 6	In defining a building development application it is not necessary to do so by reference to the assessment manager. Council understands that the powers of a private certifier are limited by section 10 of the Building Act. However, it creates some confusion that a private certifier may be able to go beyond the building assessment provisions (BAP) in circumstances when the local government is the assessment manager – it is expressly stated that the building development application must be assessed against the BAP.	Section 6 should be amended as follows: **What is a *building development application*** A ***building development application*** is an application for a development approval under the Planning Act, to the extent the application is for building work that, under that Act, must be assessed against the building assessment provisions. *Note—* *For the functions of a local government in relation to building development applications, see section 51.*
Clause 8, pages 10-11, section 83(1)(b)	The section is titled 'General restrictions on granting building development approval' and the introductory words in the example in 83(1) state "The private certifier must not grant the building development approval applied for". A building development approval is relevantly defined under the Building Act to mean "a development approval to the extent it is for building work". A development approval is relevantly defined under *Sustainable Planning Act 2009* (SPA) to be in the form of "a preliminary approval, a development permit or an approval combining both a preliminary approval and a development permit in the one approval". Section 83(1)(b) seems to limit its operation to an application for a development permit, where the intention of the section seems to be limiting the granting of a building development approval. Therefore, a conflict would arise between the introductory words of the provision which seek to prohibit the granting of a preliminary approval, to that of the words of the subsection to seemingly allow the private certifier to grant a	Section 83(1)(b) should be amended as follows: (b) until a relevant preliminary approval is in effect, for the part under the Planning Act, section 245A. *Example—* *A proposal comprises building work which requires assessment against both the building assessment provisions and a planning scheme under the Planning Act. The private certifier is engaged to carry out the assessment against the building assessment provisions and decide the building development application. The building development application must not be decided until all relevant preliminary approvals for the building work assessable against the planning scheme under the Planning Act are effective.*

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	preliminary approval. A new example should be provided for section 83(1)(b) in order to provide clarity of the operation of the provision.	
Section 83(1)	Council is of the view that the maximum penalty for a breach of section 83(1) does not reflect the potential seriousness of the offence. Furthermore, a private certifier could also be facilitating a development offence under section 578 of the SPA which is proposed to carry a maximum penalty of 4,500 penalty units. Amending 83(1) would bring the maximum penalty for both offences into line.	In relation to the maximum penalty for a breach of section 83(1) it should be amended as follows: Maximum penalty— 4,500 penalty units. .

Further suggested amendments to the Building Act	
Option 1 – Amend sections 86 and 88	**86 Requirements on approval of application** (1) If the private certifier approves the application, the certifier must— (a) ~~within~~ at least 5 business days prior to giving the approval to the applicant under section 88~~,~~ give the local government a copy of each of the following documents identified in the way stated in subsection (2)— (i) the application; (ii) the approval documents for the application; and (b) give the local government the approved form for the documents mentioned in paragraph (a); and (c) pay the fee fixed by the local government under the *City of Brisbane Act 2010* or the *Local Government Act 2009* for accepting the application and the approval documents. Maximum penalty—40 penalty units. **88 Giving approval ~~documents~~ to applicant** (1) This section applies only if the private certifier approves the application. (2) The private certifier must not give the applicant any approval ~~documents~~ for the application unless the certifier has complied with section 86(1). Maximum penalty—50 penalty units. (3) Subsection (4) applies if the private certifier— (a) receives an acknowledgement under section 87 from the local government for the application; and (b) has not given the approval documents to the applicant. (4) The private certifier must give the approval ~~documents~~ to the applicant within 5 business days after receiving the acknowledgement.

	Note— See also section 132 (Effect of building certifier not complying with Act if no penalty provided). (5) Subsection (6) applies if the private certifier— (a) gives the approval ~~documents~~ to the applicant; and (b) has not received an acknowledgement under section 87 from the local government for the application. (6) The private certifier must, for at least 5 years after giving the approval ~~documents~~, keep written evidence that the fee mentioned in section 86(1)(c) for the application was paid to the local government. Maximum penalty for subsection (6)—20 penalty units.
Option 2 – Amend section 88	**88 Giving approval ~~documents~~ to applicant** (1) This section applies only if the private certifier approves the application. (2) The private certifier must not give the applicant any approval ~~documents~~ for the application until the certifier has received the acknowledgment under section 87 from the local government.~~unless the certifier has complied with section 86(1).~~ Maximum penalty—50 penalty units. (3) Subsection (4) applies if the private certifier— (a) receives an acknowledgement under section 87 from the local government for the application; and (b) has not given the approval documents to the applicant. (4) The private certifier must give the approval ~~documents~~ to the applicant within 5 business days after receiving the acknowledgement. *Note—* See also section 132 (Effect of building certifier not complying with Act if no penalty provided). (5) Subsection (6) applies if the private certifier— (a) gives the approval ~~documents~~ to the applicant; and (b) has not received an acknowledgement under section 87 from the local government for the application. (6) The private certifier must, for at least 5 years after giving the approval ~~documents~~, keep written evidence that the fee mentioned in section 86(1)(c) for the application was paid to the local government. Maximum penalty for subsection (6)—20 penalty units.

Reference/Page Number	Comment	Recommended Change
***Local Government Electoral Act 2011* (the Electoral Act)**		
Clause 29, page 28, section 202	Council notes that the Bill proposes to amend section 202 of the Electoral Act by including a new subsection (3) which would require local governments to pay the costs incurred by the Electoral Commission Queensland (ECQ) in carrying out functions relating to conducting elections generally including: (a) the remuneration, allowances and reasonable expenses paid to members or staff of the electoral commission; and (b) the costs of making appropriate administrative arrangements for the conduct of elections. The current wording of section 202 of the Electoral Act only requires local governments to pay for the costs directly incurred by the ECQ. The proposed amendment will mean that local governments, such as Council, will now also be liable to pay the ECQ's indirect costs associated with conducting an election. This amendment has the potential to expose local governments to unknown and unverifiable additional costs associated with conducting local government elections. Council considers that a local government is not be responsible for the indirect costs incurred by ECQ.	Section 202 should be amended to ensure that local government is not responsible for the indirect costs incurred by ECQ.

Reference/Page Number	Comment	Recommended Change
***Planning Act 2016* (the Planning Act)**		
Clause 37, pages 31-32, section 73A	Council questions the need to split impact assessable building work and building work which must be assessed against, or have regard to, a matter that is not a building assessment provision (i.e. code assessable). The principle remains the same. As this relates to the Planning Act, where two development permits are permitted, subsections (3) and (5) ought to be amended to a development permit becoming effective after a development permit is given by an entity other than a private certifier.	(3) A development permit given by the private certifier for the building work does not authorise the carrying out of the part requiring impact assessment, unless a relevant preliminary approval or a development permit given by an entity other than a private certifier is in effect for the part. (5) A development permit given by the private certifier for the building work does not authorise the carrying out of the part requiring assessment against, or having regard to, the matter, unless a relevant preliminary approval or a development permit given by an entity other than a private certifier is in effect for the part. (6) In this section— ***relevant preliminary approval*** means a preliminary approval given under the *Sustainable Planning Act 2009* by an entity other than a private certifier.
Clause 56, page 38, section 307A	The intent of section 307A seems to be to preserve, under the Planning Act, the existing SPA conversion application rights for applicants who have a SPA development approval in force when SPA is repealed. However, the amendment goes beyond preservation of existing rights as it does not contain the existing limitation that requires an application to be made before construction of the non-trunk infrastructure commences (SPA section 658 application of sdiv 1). The proposed amendment is to clarify that the position remains the same as in SPA, requiring that a conversion application be made before construction of the non-trunk infrastructure starts.	In relation to section 307A(2) the subsection should be amended as follows: (2) Despite section 139(2), the applicant for the development approval may make a conversion application at any time after the approval starts to have effect but before the construction of the non-trunk infrastructure has started.

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Planning (Consequential) and Other Legislation Amendment Act 2016		
Clause 63, page 41, section 39	In defining a building development application it is not necessary to do so by reference to the assessment manager. Council understands that the powers of a private certifier are limited by section 10 of the Building Act. However, it creates some confusion that a private certifier may be able to go beyond the BAP in circumstances when the local government is the assessment manager – it is expressly stated that the building development application must be assessed against the BAP.	What is a *building development application* (1) A *building development application* is (a) an application for a development approval under the Planning Act, to the extent the application is for building work that, under that Act, must be assessed against the building assessment provisions. *Note—* *For the functions of a local government in relation to building development applications, see section 51.* (b) a change application, other than a minor change application, to change a development approval— (i) if the development approval approves building work—in relation to the building work; or (ii) otherwise—to approve building work. (2) However, if a local government is the responsible entity for a change application, the application is a building development application only to the extent the building work mentioned in subsection (1)(b)(i) or (ii) must, under the Planning Act, be assessed against the building assessment provisions. (3) In this section— minor change application means a change application for a minor change to a development approval, as defined in the Planning Act.
Clause 65, page 43, section 75	In relation to section 83(1)(b): The section is titled 'General restrictions on granting building development approval' and the	In relation to 83(1)(b) the subsection should be amended as follows: (b) if the building development application is for a development

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	introductory words in the example in 83(1) state "The private certifier must not grant the building development approval applied for". A building development approval is relevantly defined under the Building Act to mean "a development approval to the extent it is for building work". A development approval is relevantly defined under SPA to be in the form of "a preliminary approval, a development permit or an approval combining both a preliminary approval and a development permit in the one approval". Section 83(1)(b) seems to limit its operation to an application for a development permit, where the intention of the section seems to be limiting the granting of a building development approval. Therefore, a conflict would arise between the introductory words of the provision which seek to prohibit the granting of a preliminary approval, to that of the words of the subsection to seemingly allow the private certifier to grant a preliminary approval. As this relates to the Planning Act, which permits the giving of two development permits the introductory words of the section need to be amended to reflect the fact that a private certifier may issue a development permit (which doesn't take effect) notwithstanding that a relevant preliminary approval or development permit given by an entity other than a private certifier is not in effect Insert a new example of the operation of section 83(1)(b) in order to provide clarity of the operation of the provision. In relation to the maximum penalty for a breach of section 83(1) the Council is of the view that maximum penalty does not reflect the potential seriousness of the offence. In effect a private certifier could be facilitating a development.	permit that, under the Planning Act, section 73A, does not authorise the carrying out of a part of the building work, the development permit is of no effect until: (i) the relevant preliminary approval is in effect for the part; or (ii) a development permit given by an entity other than a private certifier is in effect for the part. *Example—* *A proposal comprises building work which requires assessment against both the building assessment provisions and a planning scheme under the Planning Act. The private certifier is engaged to carry out the assessment against the building assessment provisions and decide the building development application for a development permit. The development permit is of no effect until all relevant preliminary approvals or a development permit given by an entity other than a private certifier for the building work assessable against the planning scheme under the Planning Act are effective.* In relation to the maximum penalty for a breach of section 83(1) it should be amended as follows: Maximum penalty— 4,500 penalty units.

Reference/Page Number	Comment	Recommended Change
***Sustainable Planning Act 2009* (SPA)**		
Clause 69, page 46, section 120	Council supports bringing forward improvements to the Temporary Local Planning Instrument (TLPI) process. It is however recommended that TLPIs be given interim effect from the local government resolution until the Minister has decided to approved the TLPI and it has been notified in the gazette. This approach would allow for immediate commencement (ie. a holding pattern) while a decision is made by the Minister and would reduce the risk of not protecting a local matter under threat while communications between local government and the Queensland Government are underway.	It is recommended that TLPIs should be given interim effect from the date of the local government resolution, until the Minister has decided to approve the TLPI and it has been notified in the gazette. This proposed change should also be reflected in the Planning Act.
Clause 72, page 47, section 245A	This section is different to section 73A of the Planning Act as SPA does not allow two development permits to be issued. The premise upon which subsections (3) and (5) are based (in that a development permit given by the private certifier for the building work does not authorise the carrying out of the part requiring particular assessment) cannot lawfully occur pursuant to section 83(1) of the Building Act, as it is an offence to issue a building development approval until all relevant preliminary approvals are in effect. Council does not consider there to be a need to split impact assessable building work and building work which must be assessed against, or having regard to, a matter that is not a building assessment provision (i.e. code assessable) as the principle remains the same.	Section 245A should be amended as follows: (1) This section applies to a development application for a development permit that— (a) is for building work; and (b) is made to a private certifier as assessment manager. (2) Subsection (3) applies to the development application if any part of the building work requires impact assessment. (3) A private certifier cannot issue a building development approval for a building development application which a part requires impact assessment unless a relevant preliminary approval is in effect for the part. (4) Subsection (5) applies to the development application if— (a) any part of the building work must be assessed against, or having regard to, a matter that is not a building assessment provision; and (b) none of the referral agencies are required to assess the

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		application against, or having regard to, the matter. (5) A private certifier cannot issue a building development approval for a building development application which a part requires assessment against, or having regard to, the matter, unless a relevant preliminary approval is in effect for the part. (6) In this section— ***relevant preliminary approval*** means a preliminary approval given by an entity other than a private certifier.
Clause 74, page 48, section 457	Council supports bringing forwarded changes which clarify the operation of the cost provisions and the Planning and Environment Court's discretion to make an order for costs.	No change recommended.
Clause 78, page 51, section 578	In addition to the proposed amendment to the penalty units section 578 of SPA provides that it is an offence to carry out assessable development without a permit. As Council can only grant a preliminary approval for building work which is assessable against the *Brisbane City Plan 2014,* under the SPA, Council cannot seek action under section 578 against a land owner for carrying out assessable development if they have obtained a development permit from a certifier (for the building work assessable against the BAP), but not obtained a preliminary approval from Council.	The section ought to include an additional amendment to make it an offence to carry out assessable development without a development approval.