Moreton Bay Regional Council

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

Via email: ipnrc@parliament.qld.gov.au

Dear Sir/Madam,

Submission on the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill

Thank you for the opportunity to make a submission on the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016.

As an overall observation, the title of the Bill is not truly reflective of its actual content, with far more than half of the document dealing with amendments to planning and building legislation. A casual observer would not expect to find amendments of a primarily development related nature in a Bill bearing this title.

The issues outlined in this submission are confined solely to the planning and building legislation amendments, particularly those which will affect the *Planning Act 2016*, the *Planning (Consequential) and Other Legislation Amendment Act 2016*, and the *Sustainable Planning Act 2009*. Council supports many of the proposed amendments, but has significant concerns with a number of the other proposed changes.

Proposed Changes to the Planning Act

(1) **Clause 37 - Insertion of new section 73A**

It is understood that the new section 73A is intended to address the current shortcomings in the interaction between the *Building Act* and the *Sustainable Planning Act* identified in recent Planning and Environment Court decisions (Gerhardt v Brisbane City Council). Provided that one minor change is made, the new section 73A is likely to assist in ensuring that the current shortcomings are not perpetuated in the *Planning Act 2016* when it eventually comes into effect. The minor change that is suggested is the removal of the words "*under the old Act*" from the definition of the term "relevant preliminary approval" in subsection (6). Without that change, section 73A will be restricted in its effect to "building development applications" either lodged before the commencement of the *Planning Act* or for which a "relevant preliminary approval" had already been obtained under the *Sustainable Planning Act*. If the change is not made, the current shortcomings of the *Sustainable Planning*

Act will continue to apply, as the reworded section 83(1)(a) of the *Building Act* will not effectively prevent private certifiers from issuing premature "building development approvals".

(2) **Clause 49- Trunk infrastructure charges for local governments and distributor-retailers**

Chapter 4 of the *Planning Act* deals with charges for trunk infrastructure that may be levied on development proponents, and sets limits on the maximum amount that may be charged by local governments and distributor-retailers as trunk infrastructure providers. In particular, section 115 outlines how the trunk infrastructure charges are distributed between local governments and distributor-retailers, and makes provision for those entities to enter into an agreement about the breakup of the maximum allowed charges (known as a "breakup agreement").

The amendment proposed under clause 49 of this Bill will impose an obligation on each party to a "breakup agreement" to publish a copy of the agreement on its website. However, this seems to conflict with the obligations imposed on local governments under section 3(4)(a) of Schedule 24 of the draft Planning Regulation which lists those documents that a local government may publish on its website. These two obligations need to be suitably aligned.

(3) **Clause 56 - Transitional provisions for "conversion applications"**

Section 139 of the *Planning Act* provides a mechanism for a development proponent to challenge the way a local government has classified infrastructure that the development proponent has been required to construct under a condition of a development approval. That mechanism is described as a "conversion application" and, under section 139, it must be made to the local government prior to the commencement of construction of that infrastructure, and within 1 year after the development approval containing the infrastructure condition comes into effect.

When this committee invited submissions on the Planning Bill in 2016, Council expressed its view that the 1 year timeframe within which such an application may be made is overly generous and needs to be reduced. In particular, the submission stated that "*...it would be difficult to substantiate that a developer is not in a position to make a decision on these matters at the Negotiated Decision stage considering the decision is commonly critical to the feasibility of the development proposal. Council is finding that the uncertainty created by the lengthy period within which a Conversion Application may be made, is leading to an increase in the number of Infrastructure Agreements being discussed.*".

The transitional provision proposed by clause 56 of this Bill will remove the 1 year restriction for "conversion applications" relating to development approvals in force when the *Sustainable Planning Act* is eventually repealed. In terms of development applications and development approvals, transitional provisions are normally limited to those applications lodged, but not decided, when a new regulatory regime comes into effect. Traditionally, it has not extended to related approvals made after the commencement of the new regime. Council wishes to express its concern about the removal of the 1 year time restriction for the types of "conversion applications" currently covered by this proposed amendment.

(4) **Clause 58 - Changes to the "building work" definition**
Part of this amendment proposes to remove what the explanatory notes that accompanied the Bill describe as a "*...redundant sub-paragraph in the definition of building work.*". The provision that is proposed to be removed relates to works regulated under the "building assessment provisions" which take the form of "*...a management procedure or other activity relating to a building or structure even though the activity does not involve a structural change to the building or structure.*". The provision currently appears in the definition of "building work" in the *Building Act*, and it is not proposed to be removed under the *Planning (Consequential) and Other Legislation Amendment Act 2016*. The provision needs to be retained to maintain some consistency between the definitions for the same term in the *Planning Act* and the *Building Act*.

Proposed Changes to the Planning (Consequential) and Other Legislation Amendment Act

(1) **Clause 65 - Consequential changes to section 83 of the Building Act**
Section 83 of the *Building Act* places restrictions on when a private certifier may issue a "building development approval". The amendment proposed here is intended to address the current shortcomings in the interaction between the *Building Act* and the *Sustainable Planning Act* identified in recent Planning and Environment Court decisions (Gerhardt v Brisbane City Council), and is linked to the new section 73A that is proposed to be inserted in the *Planning Act*.

The amendments to section 83 as currently proposed will not effectively prevent private certifiers from issuing premature "building development approvals". To overcome this problem, either the proposed amendments to section 73A of the *Planning Act* need to be modified as suggested above, or the amendments to section 83(1) need to be expanded to specifically cover "building development applications" lodged after the commencement of the *Planning Act* for which a "relevant preliminary approval" has not already been obtained under the *Sustainable Planning Act*. The latter option is intended to deal with applications outside the scope of section 73A as currently proposed.

Proposed changes to the Sustainable Planning Act

(1) **Clause 70 - Requirement for certain preliminary approvals**
Section 241 of the *Sustainable Planning Act* deals with preliminary approvals and describes both their effect and when they are needed. Subsection (2) clearly indicates that there is "*...no requirement to get a preliminary approval for development...*", and this has been a contributing factor to the Planning and Environment's Court's findings in Gerhardt v Brisbane City Council. Many of the proposed amendments under this Bill are aimed at overcoming the current shortcomings in the interaction between the *Building Act* and the *Sustainable Planning Act*, and the new section 245A goes a long way to correcting this. However, the interaction between section 241 and the new section 245A would be clearer if the new note proposed to be included in 241(2) was reworded to form a regulatory part of that section. For example, the current subsection (2) could be replaced with:-

"However, except in the circumstances outlined in section 245A, there is no need to get a preliminary approval for development.".

Once again, thank you for the opportunity to make a submission on the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill. Given the effect that the proposed amendments to planning and building legislation will have on Council's operations, as well as development in general, I trust that the issues outlined above will receive favourable consideration.

For further information please contact Ms Kate Isles. Manager Strategic Planning

Yours faithfully,

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Director
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