Date: 30 January 2017
Contact: Dyan Currie
[redacted]
Your reference: NA
Our reference: PD113/1045/01/05

CITY OF GOLDCOAST.

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

Dear Sir/Madam

Local Government Electoral (transparency and accountability in local government) and Other Legislation Amendment Bill 2016

Thank you for the opportunity to provide comment on the Local Government Electoral (transparency and accountability in local government) and Other Legislation Amendment Bill 2016 (the Bill).

Our understanding of the objectives of the Bill, amongst others, is to make amendments to planning and building legislation to:

- Give early effect to certain planning reforms contained in the *Planning Act 2016* and *Planning and Environment Court Act 2016*.
- Make various technical and clarifying amendments.
- Address issues arising from several court decisions concerning the development approval of building work.

Officers support adoption of the Bill with regard to the proposed amendments to the *Planning Act 2016* and *Planning and Environment Court Act 2016*. It is considered the early implementation of these amendments will support a more streamlined transition to working under the new legislation and help achieve State's intent for planning and development in Queensland. Most notable positives for local government within the Bill include:

- Amendments to planning and building legislation clarifying the circumstances for building work approvals, the order in which approvals should be obtained and the responsibilities of certifiers to obtain approvals from local government before finalising their assessment.

There remains; however, some outstanding issues with the Bill, which have been summarised on the following pages. Officers of the City of Gold Coast recommend State address these outstanding issues prior to adopting the Bill.

Definition of tidal area

It is intended the definition of '*tidal area*' provided in section 19 of the *Planning Act 2016* be amended by clause 32 of the Bill. Officers are concerned the proposed definition does not sufficiently provide for all relevant tidal waters within the city.

Officers consider there is a discrepancy between what the definition provides and the local government boundary map for the Gold Coast prescribed under the *Local Government Regulation 2012* (ie. the Local Government Boundary Map - LGB 30 edition 2).

The map includes the tidal waters of southern Moreton Bay and the Broadwater. The Bill defines the tidal area for a local government as meaning:

(i) the part or parts of a river, stream or artificial waterway that tidal water in or next to the area or land; and

(ii) between the high water mark and the middle of the river, stream or artificial waterway.

These are not terms that could be strictly applied to southern Moreton Bay or the Broadwater. It would appear the intention is to include tidal areas of Southern Moreton Bay and the Broadwater within the tidal area, however the wording is unclear.

It is recommended the definition for a local government tidal area be reviewed to include all relevant tidal waters.

Applying the meaning of tidal area beyond the limitation of prescribed tidal works

Section 19 of the *Planning Act 2016* limits local government to applying its planning scheme in relation to tidal areas to prescribed tidal works. As such, other types of tidal works generally need to be referred to State for assessment. However, the draft State Development Assessment Provisions dated November 2016 do not allow the consideration of appropriate planning scheme provisions in the assessment of development below the high water mark.

It is considered appropriate the provisions of a planning scheme may also be relevant in the assessment of other types of tidal works and/or other types of development below the high water mark.

Where local government has nominated that its planning scheme is to be applied to the assessment of prescribed tidal works, it would seem a logical extension those provisions are used in the assessment of all tidal works, including where State is the assessment manager. This would ensure local resilience to coastal hazards is maintained through all development assessment.

It is recommended the Bill be amended to ensure section 19 of the Planning Act 2016 and specifically the definition for 'tidal area' does not limit local government to applying its planning scheme to prescribed tidal works only; rather, the definition be extended to apply to all development in tidal areas.

Inability to recover infrastructure charges levied by Allconnex

Council officers have identified there is a gap in current legislation (specifically the *Sustainable Planning Act 2009* (SPA) and *South East Queensland Water (distribution and retail restructuring) Act 2009* (SEQ Water Act), which means infrastructure charges levied by Allconnex, that were not due for payment before 1 July 2012, cannot be recovered as a rate; and cannot otherwise be recovered from the current owner if there has been a change in ownership since the charge was levied. It has also been identified that this gap will continue under the *Planning Act 2016*.

The only right of recovery for infrastructure charges issued under the above circumstances is against the person or entity to whom the charge notice was issued, who may not be the current owner, or have any association with the development; and can only be done by commencing recovery proceedings through the Courts. Failure to pay an infrastructure charge by the due date does not give rise to a development offence which would enliven Council's other enforcement options against an owner or occupier.

As at July 2016, the City has identified there is approximately $29,000,000 in active charges, which were levied by Allconnex between 1 July 2010 and 30 June 2012 associated with MCU approvals. Active charges are charges levied, which have not yet been paid. Even assuming only 10% – 20% are overdue or will become overdue results in a value of $2.9M to $5.8M. Charges levied associated with ROL approvals have been excluded because there is less risk that these charges will not be paid. Logan City Council and Redland City Council, as Councils who were a part of Allconnex, are subject to the same legislative constraints.

Officers of the Department of Infrastructure, Local Government and Planning have previously advised it was intended the Bill would address this gap in the legislation. However, Council officers have reviewed the Bill and consider it does not presently do this.

It is recommended the Bill be amended to either amend the Planning Act 2016 or the SEQ Water Act to expressly identify a local government, who has withdrawn from Allconnex, is able to recover overdue infrastructure charges levied by them as if the debt were overdue rates irrespective of whether the charge was payable as at 30 June 2012 or which legislation the charge was levied under.

Should you have any questions or would like to discuss further the comments identified in this letter, do not hesitate to make contact.

Yours faithfully

Dyan Currie
Director, Planning and Environment
For the Chief Executive Officer
Council of the City of Gold Coast