



30 January 2016

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

Dear Sir/Madam

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 (the Bill)*.

Please find attached a detailed submission that outlines eleven recommendations in relation to the Bill. Generally the Local Government Association of Queensland (LGAQ) supports the transparency and accountability elements, and we believe that the original LGAQ submission to the Crime and Corruption Commission (CCC) has been mostly incorporated into the Bill and Explanatory Notes.

However, amendments regarding several court decisions concerning development approvals for building development works require further refinement to remove ambiguity and to improve the current framework.

Should you need clarification regarding these points, please do not hesitate to contact Mr Luke Hannan, Manager – Planning, Development and Environment

Kind regards

Sarah Buckler  
GENERAL MANAGER - ADVOCACY



*Submission to Parliamentary Committee Inquiry into the Impacts of Invasive plants (weeds) and their control in Queensland*

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***Local Government Electoral (Transparency  
and Accountability in Local Government)  
and Other Legislation Amendment Bill  
2016***

**Submission**

**Local Government Association of Queensland Ltd**

**27 January 2017**



The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association setup solely to serve councils and their individual needs. The LGAQ has been advising, supporting and representing local councils since 1896, allowing them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places that count; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and delivering them the means to achieve community, professional and political excellence.



## 1. Introduction

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* (the Bill).

The LGAQ made a submission on the Crime and Corruption Commission (CCC) draft report 'Transparency and Accountability in Local Government', was a member of the Review Panel which informed the Government's response to the final CCC report and was consulted during the development of the Bill. There are only three issues upon which further specific comment is required outlined in more detail in Section 2 below.

In principle, the LGAQ supports the intent of the transparency and accountability elements of the Bill and we believe that the original LGAQ submission to the CCC has been mostly incorporated into the Bill and Explanatory Notes.

The LGAQ also supports the intention of the Bill to clarify the relative responsibilities of private building certifiers and councils in assessing building work in a way that allows each to effectively address their respective interests. Although the objective of the changes is welcomed, the LGAQ and councils have identified a number of clarifying amendments that that will remove possible ambiguity and achieve alignment between legislation. Further concerns regarding the current drafting and recommendations are outlined in greater detail in Section 3 below.

## 2. Response to proposed amendments regarding CCC draft report 'Transparency and Accountability in Local Government'

2.1 In the original submission to the CCC, the LGAQ suggested that a single definition of gift be clarified in both the Local Government Act 2009 and Local Government Electoral Act 2011. This definition would include reference to the fact that it does not matter whether the councillor considers it a gift for electoral purposes or other purposes.

During the consultation on the draft Bill, the Department of Infrastructure, Local Government and Planning advised that the LGAQ's proposal for a single definition of gift was outside the scope of the Bill but that the Department would give it further consideration.

**Recommendation 1:** The LGAQ recommends the State Government pursue the LGAQ's proposal for a single definition of gift as a further improvement to the disclosure regime.

2.2 Regarding the proposed amendments dealing with unexpended funds within a candidate's, or group of candidates', bank account (clauses 25 and 26 of the Bill), one of the options for the dispersal of excess funds is to allow those funds to be paid to a political party. While this was not part of the CCC's recommendation 5, the LGAQ is willing to support this amendment.

**Recommendation 2:** The LGAQ supports clauses 25 and 26 of the Bill.

2.3 The LGAQ notes the amendment to Section 202 (local governments responsible for expenditure for conducting local government elections) (clause 29 of the Bill). While this does not relate to the CCC Report, the LGAQ supports the amendment on the basis that the ECQ is more transparent with councils in relation to the work that the ECQ Local Government Electoral Unit undertakes between elections, that they work proactively with councils to ensure that future electoral events run smoothly and that they promote the work that they do during the intervening periods to councils through some form of regular (cost neutral) update.

**Recommendation 3:** The LGAQ supports clause 29 of the Bill.



### 3. Response to proposed amendments regarding issues arising from several court decisions concerning development approval for building work

3.1 The various 'Gerhardt' decisions in the Planning and Environment Court and the Court of Appeal have raised concerns by some local governments regarding:

- (a) Whether a preliminary approval for building work assessable against a planning scheme is necessary before a private certifier can grant a building development approval;
- (b) The distinction between a local government's role as a the assessment manager for building work assessable against a planning scheme and its role as a concurrence agency for building work assessable against the building assessment provisions;
- (c) The nature and timing of the necessary approvals for building work such that there may be some confusion as to when certain building work is actually authorised to be carried out.

3.2 The LGAQ supports the State's decision to introduce amendments to the *Building Act 1975* (Building Act), the *Sustainable Planning Act 2009* (SPA) and the *Planning Act 2016* (Planning Act) to provide clarity on such matters.

3.3 It appears that the State's amendments are intended to achieve the following outcomes:

- (a) Under the current SPA regime where only one development permit is required for development, a private certifier must not give a building development approval until a preliminary approval is in effect for any part of the building work that is assessable against a planning scheme. As a 'backstop', any development permit given by a private certifier will not authorise the part requiring assessment against a planning scheme unless a relevant preliminary approval is in effect.
- (b) Under the proposed *Planning Act* regime where more than one development permit may be given for development, a private certifier must not give a building development approval until a relevant preliminary approval, or a development permit given by an entity other than the private certifier, is in effect for the part. In addition, a building development application is taken not to have been received by a private certifier until such a relevant preliminary approval or development permit is decided. As a 'backstop', any development permit given by a private certifier will not authorise any part of the building work requiring assessment against a planning scheme unless a relevant preliminary approval or development permit is in effect for the part.

3.4 While the introduction of a 'backstop' under the planning Acts is desirable, it also creates a potential inconsistency with the *Building Act* regime. That is, on one hand, the *Building Act* prohibits the giving of a development permit by a private certifier in particular circumstances but, on the other hand, the planning Acts contemplate and provide for the possibility of such an approval being given notwithstanding the *Building Act* prohibition. A consistent approach would be preferred by local governments so that it is clear under both the *Building Act* and the two planning Acts that a private certifier simply must not give a building development approval in the absence of the relevant preliminary approval or development permit for the part requiring assessment against a planning scheme.

3.5 The LGAQ otherwise wishes to raise the following issues regarding the proposed amendments.

3.6 In relation to the proposed amendments to the *Building Act* for the purposes of the SPA:

- (a) An example should be reinstated for section 83(1)(b) to make it clear how the provision is intended to operate;



- (b) Given the potential consequences of a breach (e.g. the demolition of a character house without local government approval), the maximum penalty for an offence against section 83(1)(b) should be increased in line with development offences under the *Planning Act*; and
- (c) The requirements for a private certifier to give approval documents in section 88 of the *Building Act* should be subject to the private certifier first receiving the relevant acknowledgement from the local government under section 87 to ensure that the local government is at least made aware of the proposed approval before the private certifier gives it to an applicant.

3.7 In relation to the proposed amendments to the *Planning Act* and consequential amendments to the *Building Act*:

- (a) Given that proposed section 83(1)(b) of the *Building Act* will prohibit a private certifier from giving a building development approval until a relevant preliminary approval or development permit given by an entity other than the private certifier is in effect, proposed section 73A of the *Planning Act* should also include a reference to a development permit given by an entity other than the private certifier to complete the 'backstop' and make clear that a development permit given by a private certifier does not authorise the carrying out of building work unless a preliminary approval or another development permit is obtained for the part requiring assessment against a planning scheme;
- (b) As a consequential amendment, section 83(1)(b) of the *Building Act* should be amended to also refer to a development permit given by an entity other than the private certifier when referencing section 73A of the *Planning Act*;
- (c) Similar to the proposed amendment to section 83(1)(b) of the *Building Act* for the purposes of the current SPA regime, an example should be reinstated for section 83(1)(b) of the *Building Act* to make it clear how the provision is intended to operate under the proposed *Planning Act* regime.

3.8 In addition to the above, some local governments are concerned that the offence provisions under the SPA and *Planning Act* do not allow a local government to prosecute an offender for carrying out building work in the absence of a relevant preliminary approval. In particular, a person who has obtained a development permit from a private certifier, but not a relevant preliminary approval from a local government for the part requiring assessment against a planning scheme, may not have committed an offence against section 578(1) of the SPA or section 163(1) of the *Planning Act* under the current wording. Those provisions should be amended to make it clear that it is also an offence to carry out assessable development in the absence of a relevant preliminary approval.

### **Building Act amendments**

**Recommendation 4:** The LGAQ recommends the following example should be inserted immediately below the amendment of section 83(1)(b) of the *Building Act*:

*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.*

**Recommendation 5:** The LGAQ recommends the maximum penalty for an offence against section 83(1)(b) of the *Building Act* should be increased to 4500 penalty units.

**Recommendation 6:** The LGAQ recommends Section 88(2) of the *Building Act* should read:



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- (2) *The private certifier must not give the applicant any approval documents for the application until the certifier has received the acknowledgement under section 87 from the local government.*

### **Planning Act and consequential amendments to the Building Act**

**Recommendation 7:** The LGAQ recommends proposed section 73A of the *Planning Act* should read:

- (1) ...
- (2) ...
- (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.*
- (4) ...
- (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.*

**Recommendation 8:** The LGAQ recommends Section 83(1)(b) of the *Building Act* should be amended to read:

- (b) *if the building development application is for a development permit that, under the *Planning Act*, section 73A, does not authorise the carrying out of a part of the building work unless a relevant preliminary approval or development permit given by an entity other than a private certifier is in effect for the part...*

**Recommendation 9:** The LGAQ recommends the following example should be inserted immediately below the consequential amendment of section 83(1)(b) of the *Building Act*:

*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 or development permits for the building work assessable against the planning scheme under the *Planning Act* are effective.*

### **Amendments to the SPA and Planning Act offence provisions**

**Recommendation 10:** The LGAQ recommends Section 578(1) of the SPA should be amended to read:

- (1) *a person must not carry out assessable development unless all necessary development approvals are in effect for the development.*

**Recommendation 11:** The LGAQ recommends Section 163(1) of the *Planning Act* should be amended to read:

- (1) *a person must not carry out assessable development, unless all necessary development approvals are in effect for the development.*

Should you need clarification regarding these points, please do not hesitate to contact Mr Luke Hannan, Manager – Planning, Development and Environment,