

Your reference
Our reference LGEOLA Parliamentary Committee Submission
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Research Director,
Infrastructure, Planning and Natural Resources
Committee
Parliament House
George Street
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30 January 2017

Dear Sir/Madam

Re: **Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016 Submission by Ipswich City Council**

In reference to the consultation on the *Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016*, please find attached Ipswich City Council's submission for your consideration.

The submission relates principally to the amendments proposed to the *Sustainable Planning Act 2009 (SPA)*, *Building Act, 1975 (BA)* and the *Planning Act, 2016 (PA)* brought about in response to the 'Gerhardt' court decisions. In addition, it provides a response to the amendments proposed to the *Planning Act 2016* in relation to the timeframes for decision on change representations and the issue of Negotiated Decision Notices.

Ipswich City Council welcomes the opportunity to make a submission to the Infrastructure, Planning and Natural Resources Committee in response to the *Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016*. Council also acknowledges the opportunities given by the Department to provide informal advice and input on the response to the 'Gerhardt' court decisions.

If the committee wishes to discuss any of the matters outlined in Council's submission please do not hesitate to contact Council's Strategic Planning Manager, Nick Vass-Bowen [REDACTED] or via email [REDACTED]

Yours faithfully

[REDACTED]
Nick Vass-Bowen
STRATEGIC PLANNING MANAGER
Att.

Attachment: Ipswich City Council Submission

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

Description	Feedback Comments
<p>Amendments to the <i>Planning Act 2016</i> (PA)</p>	<p>ISSUE:</p> <p>The Bill proposes amendments to the <i>Planning Act 2016</i> (PA) to provide clarity through the removal of a now redundant note from section 76(2). The note makes reference to the <i>Development Assessment Rules</i> (DA Rules) which provided a timeframe for when a negotiated decision notice on change representations is to be issued. However, the recently released <i>Draft Development Assessment Rules</i> do not provide a timeframe relevant to this section and instead default to the PA. The effect of this is that change representations must be received, assessed, decided and a notice issued by the assessment manager during the applicant's appeal period. If not suspended by the applicant, the period is only 20 Business Days (BD).</p> <p>It is understood that the intent of the PA and specifically section 76 is to ensure that decisions on change representations are decided by the assessment manager (local government) in a timely manner. However, the effect of section 76 and the subsequent removal of any timeframe in the <i>Development Assessment Rules</i> is that the assessment manager is only afforded an additional 20BD to assess change representations where the applicant has suspended the appeal period. In circumstances where this does not occur, the assessment manager only has the balance of the appeal period to assess and decided change representations.</p> <p>The removal of this note in section 76 therefore removes the option for any timeframe to be prescribed by the DA Rules. It is noted that Council has made a separate submission on the DA Rules requesting that this timeframe issue is addressed.</p> <p>COMMENT:</p> <p>It is requested that the Bill is amended to provide for a standard 20BD timeframe for the assessment manager to assess and decide change representations, to apply from the receipt of the change representations regardless of whether the applicant suspends the appeal period or not.</p>
<p>Amendments to the <i>Sustainable Planning Act 2009</i> (SPA), <i>Building Act 1975</i> (BA) and</p>	<p>The Bill proposes amendments to both the <i>Sustainable Planning Act 2009</i> (SPA) and the <i>Building</i></p>

Planning Act 2016 (PA) – Building Development Approvals

Act 1975 (BA) to address issues arising from a number of court decisions (*Gerhardt v Brisbane City Council*) concerning development approvals for building work. It is understood that this is intended to be achieved by:

- identifying and clarifying in law the relative responsibilities of certifiers and Councils in assessing building work in a way that allows each to effectively address their respective interests;
- confirm the circumstances under which two approvals for building work are required, and those in which only one approval is needed; and
- establishing that if a development approval is required from a Council, it should be obtained first before a certifier approves an application for building work (responsibility of certifiers to await the consideration of the local government before finalising their own assessment).

During 2016 Ipswich City Council took part in a number of meetings between Councils and building certifiers, facilitated by the Department of Infrastructure, Local Government and Planning. During this process it was advised that Ipswich City Council regulates aspects of building work through its planning scheme (eg demolition of, or alterations to character places) and issues a development permit (ie not a preliminary approval), and has done so consistently since the Ipswich Planning Scheme came into force in 2004. A suggested approach was provided that allowed for Council to continue to issue a development permit for applications for aspects of building work assessed by Council under its planning scheme.

COMMENT:

Whilst the proposed changes to the SPA and the BA are welcomed and the stated outcomes sought are supported, the current drafting of the Bill raises two particular points of concern for Ipswich City Council in regard to the current operation of its planning scheme and development assessment processes.

Proposed **section 245A of the SPA and sections 83(1)(b) and 83(4) of the BA** appear to limit a Council to issuing a preliminary approval only for aspects of building work assessable under its planning scheme. Whilst this addresses the circumstances of the court cases (ie the regulation of building works under the Brisbane City Plan 2014) it does not address the circumstances of the operation of the Ipswich Planning Scheme.

It is requested that the Bill be amended to provide for

a Council to issue a preliminary approval or development permit for aspects of building work assessed under its planning scheme.

Proposed **section 245A(2) and(3) of the SPA** are considered to lack clarity regarding a Council's ability to regulate aspects of building work other than those that are impact assessable in its planning scheme. In particular it is noted that s245A(3) states:

“(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 the relevant preliminary approval is in effect for the part.”

There is no apparent equivalent section(s) that deal with other levels of assessment (eg code).

Ipswich City Council regulates aspects of building work under its planning scheme relative to ensuring that the level of assessment applied is appropriate to regulatory risk and to reduce unnecessary regulatory burden (red tape). Accordingly, the Ipswich Planning Scheme utilises code assessment as well as impact assessment.

It is requested that the Bill is amended to make it clear that a Council can regulate aspects of building work in its planning scheme by either code assessable or impact assessable development, either by expanding s245A(3) and (4) to encompass all assessment levels or inserting an additional section equivalent to s245A(3) and (4) in relation to other levels of assessment.

It is noted that **amendments are proposed to the *Planning Act 2016* (PA)** that reflect those proposed to the SPA. It is requested that the amendments outlined above in relation to the SPA are also carried over into the amendments to the PA.