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Dear Sir / Madam

**Submission on Inquiry into Court and Civil Legislation Amendment Bill 2017,  
clauses 198 to 200**

I make the following submission on behalf of the Chief Executive Officer of the City of Gold Coast (**Council**).

The inclusion of new s 57A in the Property Law Act 1974 (**PLA**) as proposed in clauses 198 to 200 of the Court and Civil Legislation Amendment Bill 2017 (the **Bill**) have the capacity to materially and adversely affect Council's interests.

*Background*

1. In 2013, Council made Local Law No 17 (Maintenance of Works in Waterway Areas) 2013 (**LL 17**).
2. Among other things, LL 17 requires:
  - (a) by s 11, persons who own waterfront land (including on Gold Coast's extensive canal systems) to maintain works (including revetment walls, pontoons, et cetera) in adjoining waterway areas in a good and safe condition at all times; and
  - (b) by s 15, sellers of certain waterfront land to disclose to buyers in contracts of sale that a specified work (as stated in Subordinate Local Law No 17.1 (Works in Non-Coastal Waterway Areas) 2013) is on, or connected to, the land being sold, failing which the buyer, by notice to the seller, may terminate the contract before its completion. (A copy of sections 14 and 15 of LL 17 is **attached**.)
3. The object of LL 17 is set out in s 2. That object includes ensuring that works in waterway areas in Council's local government area do not fall into disrepair or result in harm to human health, safety, or personal injury, or property damage or loss of amenity. Also, it is an object of LL 17 to protect the interests of buyers of certain lots which receive the benefit of works that have not been maintained.

Typical costs to reconstruct revetment walls along Gold Coast waterways varies from \$1600 upwards per metre of wall depending on the shape, age, usage and conditions of the waterway.

4. LL 17 was made to address specific issues on the Gold Coast relating to the maintenance of works in the city's extensive waterway areas and to ensure there were clear lines of responsibility for such maintenance between Council and landowners.
5. Section 15 of LL 17 complements this purpose as it ensures that buyers are well informed of their responsibilities under LL 17 before proceeding with contracts to buy affected waterfront land. In the absence of a buyer's right of termination, it is highly unlikely a seller would make the disclosure required by the provision (even though it is also an offence not to comply with the disclosure requirement).

#### *Council's local law-making power*

6. Local governments have a clear law-making power under the Local Government Act 2009 (**LGA**). Undoubtedly, such power may be exercised in circumstances where the law made by a local government alters the common law, including the freedom to contract as persons may see fit.
7. Parliament has given local governments a power to allow local governments to make local laws that are necessary or convenient for the good rule and local government of their local government areas (s 28(1) LGA). Specifically, this allows local governments to make laws that address matters arising within those areas and which may or may not be, and often are not, of concern in other local government areas. Consistent with the LGA, and having regard to the matters stated above, Council made LL 17, including s 15.

#### *Reason for clauses 198 to 200*

8. The Explanatory Notes to the Bill do not adequately explain why a statutory instrument allowing for the right of termination of a land contract should be the subject of scrutiny of Parliament. Parties are free to provide for termination rights in land contracts. Such freedom does not need to be 'approved' by Parliament.
9. It is not clear, then, why a statutory instrument of another law-making entity, namely, a local government, that provides for the termination of a land contract should be subject to the scrutiny of Parliament. The mere effect of the proposed s 57A of the PLA, namely, invalidating a provision such as s 15 of LL 17, does not, by having that effect, establish or reveal s 57A's proposed purpose.
10. As a result, Council has been left to speculate as to Parliament's proposed intention.
11. Any suggestion that a statutory instrument, including a local law, would, in providing for a right to terminate a land contract, create an additional compliance burden for sellers and their legal representatives, or that it would lead to a proliferation of similar local laws (or other statutory instruments) is

unfounded. In Council's view, there is no evidence to support any such contention. As stated, Council made LL 17 to address specific circumstances that exist on the Gold Coast. LL 17, including s 15, is well known to legal practitioners. It had been Council's experience before the commencement of LL 17 that property owners had generally been unaware of their responsibilities in relation to many waterway works and had sought to shift such responsibilities to Council.

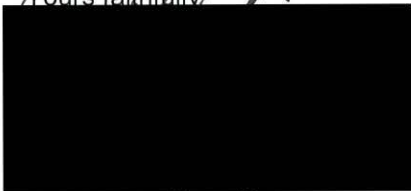
12. In any event, given the 'prescribed subordinate legislation' exception (as referred to above), the new s 57A will create a greater compliance burden for sellers and their legal representatives as they will still need to check whether an exception applies in the case of their contracts.
13. In Council's view, it is imperative, then, that relevant buyers under land contracts be given an opportunity to terminate their contracts if sellers do not disclose the existence of the matters referred to above. Without a right of termination, sellers are unlikely to include a special condition as required by s 15 of LL 17 and an object of LL 17 will likely be compromised.

*Proposed 'prescribed subordinate legislation' exception*

14. Council notes that the proposed s 57A allows for a statutory instrument, including, for example, s 15 of LL 17, to be 'prescribed subordinate legislation'. In that case, the relevant statutory instrument is not invalid (or beyond the instrument maker's power).
15. Council submits that providing for a 'prescribed subordinate legislation' exception is contrary to the intention of a local government's local law-making power under s 28(1) of the LGA (as referred to above), particularly as any consideration as to whether a regulation is made is unlikely to consider the 'local issues' that were relevant to the reasons behind the making of the local law in the first place.
16. Further, as the 'prescribed subordinate legislation' is made by regulation, it seems a cumbersome process to achieving the declared purpose of the proposed s 57A – that is, that a law providing for a right to terminate a land contract should be subject to the scrutiny of Parliament – that Parliament would then consider the regulation only by disallowance procedures under the Statutory Instruments Act 1992.

Council thanks the Committee in anticipation of the Committee's considering Council's submission.

Yours faithfully,

  
For the Chief Executive Officer  
Council of the City of Gold Coast

Gold Coast City Council Local Law No. 17 (Maintenance of Works in Waterway Areas) 2013

## **Part 6 Sale of lots and prescribed work reports**

### **14 Definitions for pt 6**

In this part—

*lot* means a lot under the *Land Act 1994* or *Land Title Act 1994*.

*prescribed work report* means a report about a specified prescribed work that complies with the requirements of a subordinate local law that is specified to apply for the purposes of this part.

*relevant lot* means a lot—

- (a) on which a specified prescribed work is completely or partly situated; or
- (b) that is waterfront land and which is connected to a specified prescribed work.

*specified prescribed work* means a prescribed work specified for this part in a subordinate local law.

### **15 Sale of lot subject to specified prescribed work**

- (1) This section applies to a contract (the *contract*) for the sale of a relevant lot.
- (2) The seller under a contract must ensure that, when the buyer becomes bound by the contract, the contract includes a clause stating or specifying the following matters—
  - (a) the contract is a contract to which this section applies; and
  - (b) the actual specified prescribed work (the *actual specified work*) that is completely or partly situated on, or which is connected to, the relevant lot;and
  - (c) under this local law, a person who is a responsible person for the specified prescribed work is, at that person's cost, required to maintain and keep the specified prescribed work in—
    - (i) a safe condition; and
    - (ii) good working order, repair and condition, including so that the prescribed work can continue to perform its intended function; and
  - (d) whether or not there is an outstanding notice issued by the local government under this local law in relation to the actual specified work and, if so, the contents of that notice.

Maximum penalty—50 penalty units.

- (3) If the contract has not already been settled, the buyer may terminate the contract, by notice in writing to the seller, if—
  - (a) the seller has not complied with subsection (2); or
  - (b) there is an outstanding notice issued by the local government under this local law in relation to the actual specified work and that fact, or the contents of the notice, have not been specified in a clause in the contract.
- (4) If the buyer terminates the contract under subsection (3), the seller must repay to the buyer any amount paid to the seller (including the seller's agent) towards the purchase of the relevant lot the subject of the contract within 14 days after the termination.