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26 June 2014  
11.1.22

The Research Director  
State Development, Infrastructure and Industry Committee  
Parliament House  
George Street  
BRISBANE, QLD 4000

Dear Sir/Madam

**State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014**

Council officers have reviewed the *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014 (Bill)*, and make this submission specifically in relation to the proposed new Chapter 9, part 7A of the *Sustainable Planning Act 2009 (SPA)*, which deals with party houses.

For many years now Council has been exploring ways to better regulate party houses within the local government area. These premises have primarily operated as commercial party hire or function venues, and the party activities have not been incidental to and necessarily associated with a residential dwelling. Council therefore welcomes the move by the State Government to define 'party house' as a land use.

It is considered that the adoption of a defined land use will provide a workable basis for local government to deal with planning issues relating to party houses. When used in combination with Council's powers under various Local Laws, the introduction of appropriate land use planning legislation has the potential to address the majority of local government's issues in attempting to regulate party houses.

However, there are a number of concerns that require resolution and/or clarification prior to finalisation of the Bill. These issues are listed below.

**Evidentiary issues**

The significant issue of concern for Council in relation to the Bill is the likely enforcement obligations and requirements associated with proving a residential dwelling is a party house as defined.

The definition of party house in the new section 755A requires a local government to prove a number of elements including the following:-

1. Premises are regularly used;
2. By guests;
3. For parties;
4. For a period of less than 10 days;
5. The premises are provided for a fee; and
6. The premises are not occupied by the owner during the period of less than 10 days.

In prosecuting a development offence, a local government carries the onus of proof and the standard of proof in matters of this kind is the *Briggenshaw* test which adopts a sliding scale which starts with the 'balance of probabilities'.

As what is involved here is a development offence with a significant fine and potential closure of an existing business, the *Briggenshaw* test is likely to be set at the higher end of the sliding scale, and so somewhere higher than the balance of probabilities, but less than 'beyond reasonable doubt'.

Because of the retrospective effect of the identification of a 'party house restriction area' there is, at least in the early stages of the new land use regulation, a high likelihood local governments will be required to run a number of development offence proceedings where a significant evidentiary burden will fall upon a local government's development compliance team to discharge the onus of proof.

Council is seeking clarification as to how the State proposes to ease the evidentiary burden in respect of the party house definition, to ensure the proposed new legislation can be effectively administered to regulate party houses.

#### **Powers of entry**

Another aspect of Council's concern about the evidentiary burden created by the definition of party house in the Bill relates to the powers of entry for authorised persons under the *Local Government Act 2009* (LGA). The current powers of entry are inadequate to enable local government officers to gather the necessary evidence to establish that a residential dwelling is a party house.

The powers of entry provisions under the LGA will require local government officers to seek the permission of the occupier to enter and stay on the property to gather evidence. It is considered unlikely that participants of a 'party' will give permission for local government authorised persons to enter a property.

Without the ability to enter a property and gather evidence, local governments will be unable to investigate and identify whether a development offence (unlawful use of a property as a party house) has taken place. Hence the usual enforcement process (a show cause notice and subsequent enforcement notice) will not occur and the unlawful use is likely to continue.

#### **Implementation costs and cost shifting**

Council's experience with party houses demonstrates that a majority of parties which result in complaints being made to Council occur outside of normal business hours. There will be a significant cost to the City associated with the need to increase resources, afterhours call outs and evidence gathering exercises.

In addition, there may be a significant cost to local governments resulting from the need to engage Queensland Police Services (QPS) to be available to attend party houses with local government officers. This is necessary to ensure the safety of Council officers and to also enable officers to obtain entry to premises by accompanying the Police.

#### **Other enforcement tools**

Notwithstanding the above concerns regarding the Bill and the manner in which it provides for regulating planning issues associated with party houses, officers note that other non-planning issues (ie. the behaviour and noise of guests), which are relevant to the problem of party houses, will still remain outstanding.

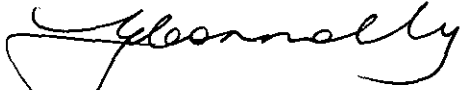
The State government will not approve a Local Law which seeks to regulate nuisance behaviour of occupants of party houses. Whilst this situation continues local government remains unable to regulate nuisance behaviour of occupants and it will remain the responsibility of the QPS to issue noise abatement notices and regulate occupants of party houses. Local government will continue to be limited to regulating the *operator only* of a party house under its Local Laws.

Thank you for the opportunity to provide a submission. Council looks forward to continuing to work with the State to help deliver the right reforms to Queensland's planning system.

Should you have any questions or would like to discuss these issues further do not hesitate to make contact with either myself or Christopher Davis via ph. 07 5582 8645 or email:

[REDACTED]

Yours faithfully



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