

30 January 2017

Mr Jim Pearce MP  
Chair  
Infrastructure, Planning and Natural Resources Committee  
Parliament House  
George Street  
Brisbane QLD 4000

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

Thank you for the opportunity to provide a submission on the *Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016*. Our submission specifically responds to the planning and building amendments presented in the Bill.

In summary, our submission reiterates key concerns raised in our submission to the Committee on the Planning Bills in 2016, along with specific matters that are addressed in the amendments, these include:

- The Property Council does not support the retrospective commencement of temporary local planning instruments.
- Our concerns regarding the removal of the Court's discretion to award costs and re-introducing pre-determined criteria for how costs are - or are not – awarded.
- The Committee and the Government are encouraged to further explore simplified changes in response to the *Gerhardt v Brisbane City Council* Queensland Planning and Environment Court (QPEC) decisions.

### **About the Property Council**

The Property Council of Australia is the leading advocate for Australia's biggest industry – property. We are a national not-for-profit organisation established to promote the work of the property industry in delivering prosperity, jobs and strong communities to all Australians.

Here in Queensland, we represent over 360 member companies across residential, commercial, retail, retirement living, industrial, tourism and education sectors. Our members are involved in all aspects of the property industry, which means all Queenslanders are touched by their activities.

The property industry is Queensland's biggest industry accounting for 11.4 per cent of GSP, and is the second largest employer creating 240,000 jobs. The property sector in Queensland contributed \$9.9 billion in combined State Government tax and local government rates, fees and charges in 2013-14, this equates to 49.8 per cent of the total amount collected.

## **Amendment of Sustainable Planning Act 2009**

Clause 69 – Amendment of s 120 (When planning scheme, temporary local planning instrument and amendments have effect)

The Property Council does not support the retrospective commencement of a temporary local planning instrument (TLPI) and has previously provided comments on this change that will come into effect under the *Planning Act 2017*.

Unless all stakeholders monitor every local government meeting for relevant resolutions, there is a risk that a person may undertake an activity that was legal at the time the activity was undertaken, but subsequently becomes unlawful because the Minister has approved the retrospective operation of a TLPI. In undertaking the activity, the person would have unknowingly committed a development offence (for which the maximum penalties will be substantially increased by the Bill).

Clause 72 – Insertion of new section 245A

Refer to comments made under clause 37, below.

Clause 74 – Replacement of s 457 (Costs)

The Property Council reiterates our concerns regarding the removal of the Court's discretion in determining the most appropriate allocation of costs for appeal proceedings on a case-by-case basis.

Removing the discretion of the Court to award costs and re-introducing pre-determined criteria for how costs are - or are not - awarded risks the making of unmeritorious appeals. This means a party can bring forward an appeal with no risk of incurring costs themselves, but may be able to inflict significant time and cost delays on another party.

The Court's discretion to order that a party pay another party's costs must be reinstated to ensure fairness and a level playing field for those utilising the Court system.

## **Amendment of Planning Act 2016**

Clause 34 – Amendment of s 49 (What is a development approval, preliminary approval or development permit)

The explanatory notes for Clause 34 refer to a decision notice given for a change application (other than for a minor change), however the proposed legislative amendment to 49(6) does not reference a minor change.

Clause 37 – Insertion of new s 73A

New 73A(4)(b) should make it clear that none of the referral agencies are required to assess the application against, or having regard to, the matter by their referral jurisdiction.

## **Amendment of Building Act 1975**

Clause 6, together with 8, 9, 37, 63, 65 and 70-72 amend several Acts to respond to the findings of the *Gerhardt v Brisbane City Council* QPEC decisions.

In our view the proposed changes will add complexity to the process under the *Sustainable Planning Act 2009* and the *Planning Act 2017*. We understand that the changes are required, however, we encourage the Committee and the Government to explore simplifying these changes before they commence.

In addressing Clause 6 more specifically, section 6(a) is limited by reference to "building work that ... must be assessed against the building assessment provisions". We query why this limitation is also not relevant to section 6(b).

Clause 8 – Amendment of s83 (General restrictions on granting building development approval)

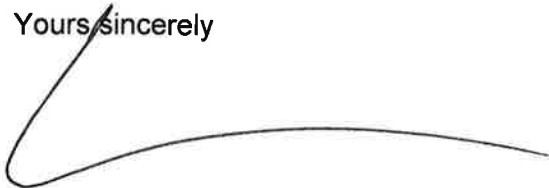
We query whether the reference to "building work" where it first occurs in section 83(1)(a) should not be "building work that must be assessed against the building assessment provisions".

## **Conclusion**

The Property Council would like to again thank the Committee for the opportunity to provide a submission on the *Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016*.

If you have any further questions about the Property Council or the detail included in this submission, please contact Chris Mountford on 07 3225 3000, or [cmountford@propertycouncil.com.au](mailto:cmountford@propertycouncil.com.au).

Yours ~~sincerely~~

A handwritten signature in black ink, appearing to be 'Chris Mountford', written over the text 'Yours sincerely'.

**Chris Mountford**  
Executive Director