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

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Jackie Trad, Deputy Premier, Minister for Transport and Minister for Infrastructure and Planning

Title of the Bill

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

Objectives of the Amendments

Building Act 1975

The objectives of the amendments are to:

- clarify the operation of the redrafted section 83(1)(b) of the *Building Act 1975* by including an example of its application;
- prevent the pre-emptive demolition of residential buildings if the demolition is assessable under a local government's planning scheme, by requiring a private certifier to delay giving an approval for the demolition to the applicant until 5 business days after the private certifier has notified the relevant local government of the approval.

Local Government Electoral Act 2011

The objectives of the amendments are to:

- clarify that candidates and groups of candidates must give a summary return to the Electoral Commission Queensland (ECQ) irrespective of the value of gifts received or if no gifts were received;

- correct action commands in clauses 25(1) and 26(1) of the Bill.

The amendments will implement Recommendation 2 and a comment about drafting made by the Infrastructure, Planning and Natural Resources Committee (the Committee) in Report No. 43 titled Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, which was tabled in the Parliament on 7 March 2017.

Planning Act 2016

The objectives of the amendments are to:

- clarify that amending a planning scheme to include a "party house restriction area" is not an "adverse planning change" for the purpose of claiming compensation under chapter 2, part 4, division 2;
- include reference to development schemes under the *Economic Development Act 2012* as matters a designator must have regard to in making a designation;
- clarify nothing stops a regulation identifying more than one assessment manager in relation to different parts of particular development, as a way of further clarifying the intended operation of amendments in the Bill dealing with the relationship between private certifiers under the *Building Act 1975* and local governments, in assessing building work that is assessable under a local planning instrument;
- simplify and streamline the process for the Minister to approve amendments to the standard conditions of a deemed approval;
- re-instate the Minister as the "responsible entity" for assessing change applications related to development approvals given by the Minister under a call-in under chapter 3 part 6;
- correct a minor error in the assessment arrangements for State heritage places;
- clarify a transitional provision for applications to convert infrastructure to trunk infrastructure;
- include a transitional arrangement clarifying the arrangements for calculating a maximum adopted charge for the financial year in which the Act commences;
- clarify transitional arrangements for approved plans of subdivision;
- make several minor changes to appeal arrangements under schedule 1 for the Development Tribunal to better align them with arrangements under existing legislation;
- make several changes to the appeal arrangements under schedule 1 to clarify them, in particular by confirming the longstanding arrangement that appeal rights are unavailable against decisions made about development applications called in under chapter 3, part 6;
- move the definition of "storey" from schedule 2 to schedule 1 (with respect to building appeal matters), in order to facilitate a different definition of "storey" to be included in the proposed *Planning Regulation 2017* to be used for planning assessment matters.

Planning (Consequential) and Other Legislation Amendment Act 2016

The objectives of the amendments are to:

- remove a duplicated term, and insert a note to clarify the relationship between the functions of a private certifier under section 48 of the *Building Act 1975* and building certifying functions under section 10 of that Act;
- clarify the operation of the redrafted section 83(1)(b) of the *Building Act 1975* by including an example of its application.

Sustainable Planning Act 2009

The objective of the amendment to create a clearer link between amendments in the Bill stating the circumstances under which a development approval given by a private certifier does not authorise development to start, and the development offence of carrying out development without an effective development permit.

Achievement of the Objectives

Building Act 1975

The policy objective is achieved through:

- including of an appropriate example under section 83(1)(b) of the *Building Act 1975*, referring to parts of building work being assessable under both a regulation and a local government's planning scheme; and
- including new subsections (4A) and (4B) in section 88 of the *Building Act 1975*, identifying the particular circumstances under which a private certifier must wait 5 business days after notifying the relevant government of a development approval before giving the approval documents to the applicant.

Local Government Electoral Act 2011

Summary returns about gifts

The policy intent of the *Local Government Electoral Act 2011* (LGEA) sections 117(3A) and 118(3A) (as inserted by clauses 16 and 17 of the Bill) is to continue the existing requirements under the LGEA for a summary return to be given to the ECQ within 15 weeks after polling day stating the total value of all gifts received during the disclosure period and the number of entities that gave the gifts. If no gifts are received during the disclosure period, the summary return is to state that no gifts were received during the disclosure period.

Because new sections 117(1) and 118(1) of the LGEA (as inserted by the Bill clauses 16 and 17) apply sections 117 and 118 if gifts of $500 or more are received during the relevant disclosure period, the Committee identified that sections 117(1) and section 118(1) may create uncertainty about the requirements under section 117(3A) and section 118(3A) for a return to be given to the ECQ if no gifts are received or if the total value of gifts received is less than the disclosure threshold.

The policy objective will be achieved by amending clauses 16 and 17 of the Bill to provide that the disclosure threshold in the LGEA sections 117 and 118 applies only to contemporaneous returns and a summary return is required to be given to the ECQ within 15 weeks after polling day stating the total value of all gifts received during the disclosure period and the number of entities that gave the gifts. If no gifts are received during the disclosure period, the summary return is to state that no gifts were received during the disclosure period.

Action commands

The Committee report noted that clauses 25 and 26 of the Bill contained minor drafting errors regarding the instructions for amendments to be made to the LGEA sections 126(5) and 127(5) respectively. The policy objective will be achieved by correcting the action commands in clauses 25(1) and 26(1) of the Bill by removing the references to ‘omit’.

Planning Act 2016

The policy objective is achieved through making several clarifying or correcting amendments to relevant sections of the *Planning Act 2016*.

Planning (Consequential) and Other Legislation Amendment Act 2016

The policy objective is achieved through making several amendments to the *Planning (Consequential) and Other Legislation Amendment Act 2016*. In the case of the proposed amendment inserting an example in section 83(1)(b) of the *Building Act 1975*, it is necessary to include the amendment in both the *Building Act 1975* and the *Planning (Consequential) and Other Legislation Amendment Act 2016*, as the latter Act replaces the relevant parts of section 83 of the former.

Sustainable Planning Act 2009

The policy objective is achieved by inserting an amendment in section 578 of the *Sustainable Planning Act 2009*, dealing with development offences, linking the term “effective development permit” under that section with the amendments in the Bill to both the *Sustainable Planning Act 2009* and the *Planning Act 2016* that identify circumstances under which a development approval given by a private certifier does not authorise development to occur.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives.

Estimated Cost for Government Implementation

There are no costs associated with the amendment.

Consistency with Fundamental Legislative Principles

The clarifications to schedule 1 of the *Planning Act 2016* could be viewed as a fundamental legislative principles issue if it were accepted that they affected a clear conferral under that schedule of appeal rights against decisions by the Minister about called-in applications.

Under the *Planning Act 2016*, and unlike the *Sustainable Planning Act 2009*, the Minister is **not** characterised as the assessment manager for a called-in application, or the responsible entity for a called-in change application. Nor is the Minister’s decision about a called-in application taken to be the decision of the original assessment manager or responsible entity.

However, under the relevant tables in schedule 1, it is the assessment manager who is the respondent for applicant and submitter appeals about decisions on development applications. In other words, the schedule does not contemplate the Minister being the respondent in such

appeals. This creates an inconsistency between the headings to the relevant items in the tables and the contents of the tables themselves, which requires clarification.

Consultation

As these make drafting clarifications, no consultation has been undertaken.

NOTES ON PROVISIONS

The Bill part 3—Amendment of Building Act 1975

Amendment 1 amends clause 8 (Amendment of s83 (General restrictions on granting building development approval)), by inserting an example of the operation of the reworded section 83(1)(b) of the *Building Act 1975*, consistent with recommendation 5 of the Committee's report.

Amendment 2 inserts new clauses 8A (Amendment of s88 (Giving approval documents to applicant)) and 8B (Insertion of new ch 11, pt 18A) after clause 8. Clause 8A inserts new subsections (2A) and (2B) into section 88 of the *Building Act 1975*, and replaces subsection (4) of that section. The amendments establish when a private certifier must wait 5 business days before giving approval documents to the applicant for the approval.

Under the *Building Act 1975*, section 86, a private certifier must give the relevant local government a copy of any application and approval documents for each approval the private certifier gives, and pay the local government a fee.

Under section 87, the local government must immediately acknowledge receipt of the documents if the private certifier complies with section 86.

Section 88 prevents the private certifier giving the applicant the approval until the private certifier has complied with section 86. However section 88 does not require the private certifier to await the local government's acknowledgement under section 87 before giving the approval documents to the applicant.

Consequently it is currently possible for a private certifier to give the approval documents to the local government and the applicant almost simultaneously. If an assessment of the building work is required under the local government's planning scheme, this may allow:

- an approval to be given to an applicant by the private certifier before a development approval is in effect reflecting assessment of the building work under the local government's planning scheme, as required under section 83(1)(b); or
- if a development approval reflecting assessment of the building work under the local government's planning scheme is in effect – an approval to be given by the private certifier which is inconsistent with the earlier approval.

Under these circumstances, the local government may have insufficient time to check the approval given by the private certifier, and take any necessary action to address either of the these two possible situations. In particular, if the building work involves demolition, there is unlikely to be any realistic opportunity for the building to be re-instated to its previous condition once demolished. This issue has arisen several times in relation to the demolition of character housing that requires assessment under Brisbane City Council's planning scheme.

Proposed clause 8A inserts new subsections (2A) and (2B) into section 88 of the *Building Act 1975.* Subsection (2B) requires a private certifier to wait for 5 business days after complying with section 86(1) before giving the applicant a copy of the approval documents (under the *Planning Act 2016*, section 71, a development approval does not take effect until it is given, or until any appeal about the approval ends).

Subsection (2A) limits the effect of subsection (2B) to building work involving the demolition of a building used only or mainly for residential purposes that is assessable against a local government's planning scheme. This would for example exclude a building used predominantly for commercial or industrial purposes, but which contained a minor residential component such as a caretaker's residence.

Contravention of subsection (2B) may incur a penalty of up to 165 penalty units.

Subsection (2B) may add up to 5 additional business days to the assessment time for particular development applications to private certifiers. However the number of applications to which subsection 2B applies is limited considerably by subsection 2A.
Clause 8B inserts a transitional provision for clause 8A, providing that the provisions of clause 8A do not apply in relation to applications approved by a private certifier before the commencement of the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016.

The Bill part 4—Amendment of Local Government Electoral Act 2011

Amendment 3 amends clause 16 (Amendment of s 117 (Gifts to candidates)) to clarify that the disclosure threshold of $500 applies only to contemporaneous returns and that a summary return is required to be given to the ECQ within 15 weeks after polling day stating the total value of all gifts received during the disclosure period and the number of entities that gave the gifts. If the candidate receives no gifts during the disclosure period, the summary return is to state that no gifts were received during the disclosure period.

Amendment 4 amends clause 17 (Amendment of s 118 (Gifts to groups of candidates)) to clarify that the disclosure threshold of $500 applies only to contemporaneous returns and that a summary return continues to be required to be given to the ECQ within 15 weeks after polling day stating the total value of all gifts received during the disclosure period and the number of entities that gave the gifts. If no gifts are received during the disclosure period, the summary return is to state that no gifts were received during the disclosure period.

Amendment 5 amends clause 17 (Amendment of s 118 (Gifts to groups of candidates)) to clarify that the agent for a group of candidates must give the ECQ a return within the required period for the election if a person acting on behalf of a group of candidates, as well as a member of the group, receives a gift during the disclosure period.

Amendments 6 and 7 amend clause 25 (Amendment of s 126 (Requirement for candidate to operate dedicated account)) and clause 26 (Amendment of s 127 (Requirement for group of candidates to operate dedicated account)) respectively to remove the action command 'omit' in clause 25(1) and clause 26(1) to correct minor drafting errors.

The Bill part 5—Amendment of Planning Act 2016

Amendment 8 inserts a new clause 32A (Amendment of s30 (When this division applies)) amending section 30 of the *Planning Act 2016* to clarify that an amendment of a planning

scheme under the *Planning Act 2016* section 276, to include a "party house restriction area" is not an "adverse planning change" for section 30, and so does not give rise to a claim for compensation under that section.

The effect of amending of a planning scheme to include a "party house restriction area" is that the use of premises for a party house is not, and never was a natural and ordinary consequence of residential development, and was never authorised under any development approval for residential development.

Due to the retrospective character of this provision, the "before" and "after" development rights for a premises included in a party house restriction area are effectively the same, so do not give rise to injurious affection upon which a compensation claim may be based.

The amendment clarifies this by adding a reference to a party house restriction area to the list of matters under section 30(4) that do not give rise to compensation.

Amendment 8 also inserts a new clause 32B (Amendment of section 36 (Criteria for making or amending designation)) inserting a reference to any development scheme under the *Economic Development Act 2012* as a matter a designator must have regard to under subsection (7) in making a designation.

Amendment 9 amends clause 33 of the Bill (Amendment of s48 (Who is the assessment manager)) by adding an additional subsection (2A) to section 48 of the *Planning Act 2016* providing that nothing stops a regulation under that section identifying more than one assessment manager in relation to different parts of particular development under a development application. The new subsection includes an example involving assessment of different parts of particular building work by a private certifier and a local government respectively.

This amendment is intended to compliment other provisions of the Bill establishing the relationship between development approvals given by private certifiers, and those given by local governments for the same development.

Amendment 9 also inserts subsection (2B) into section 48, adding a further limitation to the type of development applications an assessment manager under subsection (3) may receive. Subsection (2B) provides that subsection (3) applies only to a development application that requires code assessment only, and does not include a variation request. It is appropriate that a variation request be considered only be a local government, as the variation would affect the operation of the local government's planning scheme.

Amendment 9 also makes several minor clarifying amendments to section 48.

Amendment 10 amends clause 35 (Amendment of s64 (Deemed approval of applications)) by omitting a requirement that standard conditions of deemed approvals must be made or amended using the same process as for making or amending a State planning policy, and inserting instead a requirement for the Minister to consult with the persons the Minister considers appropriate before making the standard conditions, and to notify the making of the standard conditions in the gazette.

The proposed standard conditions are a lengthy and complex document that may require frequent refinement or improvement. For this reason, clause 35 of the Bill separates the standard conditions from the development assessment rules, of which they are currently a part.

However clause 35 currently continues to apply the same process for making or amending the standard conditions as for the development assessment rules. This may involve lengthy consultation processes for what are likely to be refinements of a minor or technical nature.

Consequently this amendment further modifies clause 35 by removing the requirement for the process for making or amending the standard conditions to follow the same process as for making or amending a State planning policy and replacing it with a simpler process.

This provides for flexibility for the standard conditions to be made or amended using more appropriate and targeted consultation than the broad community consultation required for a State planning policy.

Amendment 11 inserts a new clause 40A (Amendment of section 78 (Making change application)) providing that the Minister is the responsible entity under that section for a change application in relation to a development approval given by the Minister under a direction or a call-in under chapter 3, part 6, and providing for the Minister to “remit” a change application to the assessment manager for the development application if the Minister considers the change application does not affect a State interest, in which case the assessment manager becomes the “responsible entity” for the change application.

Amendment 12 inserts a new clause 41A amending section 80 (Notifying affected entities of minor change application) by inserting a reference to the Minister, consistent with the amendments under amendment 11.

Amendment 13 amends clause 42 (Amendment of s81 (Assessing and deciding application for minor changes)) by making a minor clarifying amendment to section 81(2)(b) adding a reference to an earlier change application, and adding a reference in section 81(2) to the matters the Minister may assess a minor change application against, consistent with amendments under amendment 11.

Amendment 14 amends clause 43 (Amendment of section 82 (Assessing and deciding application for other changes) to provide that if the Minister is the responsible entity:

- chapter 3 part 2 and 3 only apply to the extent they would have applied to the development application that was called in by the Minister, and in relation to which the change application has been made; and
- sections 105(5) and (6) apply for assessing and deciding the change application. These subsections provide that the Minister may consider any relevant matter, and need not consider any referral agency responses. This aligns the assessment criteria for a change application with those for the development application that was originally called in by the Minister and to which the change application relates.

Amendment 15 amends clause 48 by including a reference in the definition of maximum adopted charge to the prescribed amount at the beginning of the 2017-2018 financial year. The provision clarifies arrangements given that there will no “prescribed amount” at the beginning of the financial year in which the Act commences, and provides that the maximum adopted charge during the first financial year of the Act’s operation will be the prescribed amount. Proposed section 112(2)(b)(ii), which provides for the automatic indexation of the maximum adopted charge at the start of each financial year would not apply during the financial year in which the Act commences, because there would be no amount “last prescribed or amended”.

Amendment 16 inserts a new clause 49A (Amendment of s139 (Application to convert infrastructure to trunk infrastructure)) into the Bill that restructures, but does not change the

effect of, the provisions under the *Planning Act 2016*, section 139, for applying to convert infrastructure to trunk infrastructure (a "conversion application")

The restructure is related to amendment 21, which clarifies the transitional arrangements for conversion applications, in response to submissions to the Committee querying the scope of the arrangements.

Amendment 17 inserts a new clause 52A (Amendment of s277 (Assessment and decision rules for particular State heritage places)) into the Bill to correct a term in section 277 of the *Planning Act 2016* (Assessment and decision rules for particular State heritage places) the term "prudent or feasible" under that section should be "prudent and feasible" to reflect an existing term under the *Queensland Heritage Act 1992*.

Amendment 18 amends clause 56 of the Bill (Insertion of new s307A) to clarify the scope of transitional arrangements for conversion applications under the *Planning Act 2016*. This amendment relates to amendment 16, and responds to submissions to the Committee querying the scope of the transitional arrangements.

Amendment 19 inserts a new clause 56A (Amendment of s319 (Compliance assessment of documents or works)) into the Bill to clarify the scope of transitional arrangements under the *Planning Act 2016,* section 319, for documents or works subject to compliance assessment under the *Sustainable Planning Act 2009*.

Presently, section 319 would apply to plans of subdivision that had been approved under a compliance certificate but not registered on the commencement, or that require a compliance certificate after the commencement under a condition of a development approval.

Section 319 provides that the *Sustainable Planning Act 2009* continues to apply to matters requiring a compliance certificate, as generally there is no equivalent process for dealing with them under the *Planning Act 2016.*

However section 286 of the *Planning Act 2016* provides that development approvals requiring plans of subdivision, or plans of subdivision that have been approved but not registered on the commencement, are subject to the provisions of the *Planning Act 2016* from the commencement. Consequently there is a process for dealing with plans of subdivision under the new legislation.

The proposed amendment addresses this conflict by excluding plans of subdivision from the effect of section 319.

Amendment 20 replaces clause 57 (Amendment of sch 1 (Appeals)) of the Bill to make the following amendments to schedule 1 (Appeals) of the *Planning Act 2016*:

- Omitting section 1(2)(g)(ii) of schedule 1 to remove a reference to the *Plumbing and Drainage Act 2002,* part 4 or 5. The effect of removing this paragraph is that appeals about matters under the *Plumbing and Drainage Act 2002,* part 4 or 5 may be made only to the Development Tribunal. This reflects current arrangements under the *Sustainable Planning Act 2009*;
- Omitting section 1(2)(k) of schedule 1. Section 1(2) of schedule 1 qualifies the range of matters that may be appealed to a Development Tribunal where the matters may also be appealed to the Planning and Environment Court under table 1 of schedule 1.

  For example, both the Court and a Tribunal may hear appeals against decisions about development applications, however section 1(2) limits the scope of these matters that may be appealed to a Tribunal to matters relating to the *Building Act 1975*.

Section 1(2)(k) of schedule 1 refers to matters that, under another Act, may be appealed to a tribunal. This reference is not relevant to section 1(2) of schedule 1, as it does not relate to matters that may also be appealed to the Planning and Environment Court;

- Clarifying the scope of infrastructure-related appeals that may be made to a Development tribunal by;
  - omitting the term "a decision to give" from the beginning of section (2)(i) of schedule 1. Appeals to a tribunal in relation to infrastructure charges notices may be about a broader range of matters than the decision to give the notice, for example, the calculation of the charge;
  - limiting the ground of appeal in table 1, item 4(d) to the Planning and Environment Court, for consistency with current arrangements under the *Sustainable Planning Act 2009*;
- Including a definition of "storey" for section 1. This amendment is related to the removal of the definition of "storey" from schedule 2 (see amendment 21);
- Adding the term "for which an information notice must be given" after "decision" in table 3, item 3, line 3 of schedule 1. Adding this term clarifies the scope of appeals that may be made only to a Development Tribunal under the *Building Act 1975* or the *Plumbing and Drainage Act 2002*; and
- Making several amendments to clarify the relationship between schedule 1 and section 231 (which deals with matters that are non-appealable), in particular by clarifying the longstanding arrangements whereby decisions about applications called in by the Minister are non-appealable.

Amendment 21 amends clause 58 (Amendment of sch 2 (Dictionary)) of the Bill by replacing the list of definitions omitted by that clause. In particular the omission of the definition of storey relates to the inclusion of a definition for that term under schedule 1 under amendment 20.

Amendment 22 amends clause 58 (Amendment of sch 2 (Dictionary)) of the Bill by inserting a definition of ***Queensland Building and Construction Commission*** consistent with a reference to this body in schedule 1.

Amendment 23 amends clause 58 (Amendment of sch 2 (Dictionary)) of the Bill by replacing a section reference, consistent with amendments 16 and 18.

The Bill part 7—Amendment of Planning (Consequential) and Other Legislation Amendment Act 2016

Amendment 24 inserts a new clause 64A (Amendment of s64 (Amendment of s48 (Functions of private certifier (class A))) into the Bill which amends section 64 of the *Planning (Consequential) and Other Legislation Amendment Act 2016* (the Consequential Act). Section 64 of the Consequential Act amends section 48 of the *Building Act 1975* for consistency with the *Planning Act 2016*.

The effect of the amendment is to remove a term that is duplicated between the *Building Act 1975*, section 48(1) and (2) as a result of amendments in the Consequential Act; and

Amendment 25 amends clause 65 (Replacement of s75 (Amendment of s83 (General restrictions on granting building development approval))) of the Bill, which amends the

Consequential Act. The amendment inserts a reference to an example in the provision of the Consequential Act amending section 83(1)(b) of the *Building Act 1975*, consistent with amendment 1

Amendment 26 amends clause 65 (Replacement of s75 (Amendment of s83 (General restrictions on granting building development approval))) of the Bill by inserting an example of the operation of the reworded section 83(1)(b) of the *Building Act 1975* into the clause, consistent with recommendation 5 of the Committee's report.

The Bill part 8—Amendment of Sustainable Planning Act 2009

Amendment 27 amends clause 78 (Amendment of s578 (Carrying out assessable development without permit)) of the Bill to clarify that a development permit given by a private certifier that does not authorise development to start because of the amendments to the *Sustainable Planning Act 2009* and the *Planning Act 2016* in clauses 37 and 72 of the Bill is not an "effective development permit" for section 578 of the *Sustainable Planning Act 2009*.

The effect of the amendment is that development carried out under a development permit given by a private certifier in contravention of clauses 37 or 72 of the Bill is a development offence under the *Sustainable Planning Act 2009*, section 578.

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