

Sustainable Planning and Other Legislation Amendment Bill 2011

Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Attorney-General, Minister for Local Government and Special Minister of State

Title of Bill

Sustainable Planning and Other Legislation Amendment Bill 2011

Objectives of the amendments

Sustainable Planning and Other Legislation Amendment Bill 2011

The amendments to the commencement arrangements for the Bill are required to facilitate the concurrent commencement of *Sustainable Planning Act 2009* and particular *Building Act 1975* provisions, and to allow adequate time for the development of subordinate legislation to the *Plumbing and Drainage Act 2002* and to improve stakeholder awareness of the new requirements.

The amendments to the urban encroachment provisions of the Bill achieve the intent of recommendation No. 5 of the Parliamentary Transport and Local Government Committee Report No. 9: *Sustainable Planning and Other Legislation Amendment Bill 2011* by retaining a default and certain period of 10 years in the Bill to provide certainty and consistency through a standard approach, with a new provision that empowers the Minister to establish a longer period for protection at the Minister's discretion.

The option for the Minister to set a longer term with any period of time between 10 and 25 years recognises the intent of the Committee's recommendation. No limit has been set on how many times a business can seek to renew its protection.

Establishing a standard period of 10 years provides a defined point against which the business can assess its position in the context of this protection and its forward business plan. A 10 year standard period sets an appropriate

period of time that recognises evolving science and technologies that may be implemented to manage or minimise emissions that are the subject of the protection; and enables a re-assessment for the business and the community on their continued co-existence. Consequently to vary this timeframe, adequate information must be provided by the applicant to ensure that applications are complete to enable the Minister to determine if an extended period is relevant.

The amendments to remedy incorrect cross-referencing in the Bill will ensure the effectiveness of the *Urban Land Development Authority Act 2007*.

Following public consultation on the *Sustainable Planning and Other Legislation Amendment Bill 2011*, the Parliamentary Transport and Local Government Parliamentary Committee recommended (Recommendation No. 6) that an amendment be made to require the Urban Land Development Authority to consult when negotiating an infrastructure agreement. The consultation is to be undertaken with the public sector entities who are likely to be involved with the infrastructure agreement after it withdraws from all or part of an urban development area.

Requiring the Urban Land Development Authority to consult with relevant public sector entities will allay some concerns raised by local government and infrastructure providers that they will be imposed and impacted upon by agreements regarding infrastructure delivery in which they were not initially involved. The requirement for consultation will provide greater certainty for agencies when preparing budget and funding allocations. The Urban Land Development Authority is continuing to consult with local governments and stakeholders including infrastructure providers to implement the development schemes and deliver infrastructure. This practice is formalised by the amendment which introduces a statutory requirement for the Urban Land Development Authority to consult with the relevant public sector entities.

Land Sales Act 1984

The objective of the amendment to the *Land Sales Act 1984* is to amend section 27 of the Act to prevent purchasers of off-the-plan building units avoiding contracts under this section by not settling when the vendor is in a position to give a registrable instrument of transfer.

Local Government Electoral Act 2011

The amendments ensure the voters roll for the 2012 local government quadrennial election must be compiled on 25 February 2012 to provide voters with more time to enrol.

City of Brisbane Act 2010

The amendment implements a recommendation (Recommendation No.2) of the Parliamentary Transport and Local Government Committee Report No. 9: *Sustainable Planning and Other Legislation Amendment Bill 2011* to amend the Bill to ensure that the clarification to the *Local Government Act 2009* in clause 25 of the Bill, also be afforded to the *City of Brisbane Act 2010*.

The amendment of section 121(1)(d) of the *City of Brisbane Act 2010* aligns this section of *City of Brisbane Act 2010* with the amendment to section 132(1)(d) of the *Local Government Act 2009* made by clause 25 of the Bill, clarifying the extent of authorised officer power to enter premises.

Achievement of the objectives

The objectives are achieved by way of the proposed amendments.

Alternative ways of achieving policy objectives

There is no alternative way of achieving the policy objectives other than by the proposed legislative amendments.

Estimated cost for government implementation

There are no significant costs associated with the amendments.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles, except for the amendment to the *Land Sales Act 1984*. This amendment infringes the fundamental legislative principle of not imposing obligations or adversely affecting rights and liberties retrospectively.

The amendment is proposed to apply to existing contracts entered into before the commencement of the amendment. It is proposed to apply to such existing contracts regardless of whether the sunset period has elapsed. It will not apply to those contracts where the sunset period has elapsed, the

vendor has not given a registrable instrument of transfer within the sunset period and the purchaser has given written notice to the vendor in accordance with section 27(2).

This will mean those purchasers who have defaulted under existing contracts, which have not settled on the date required by the contract (and still within the sunset period), cannot terminate the contract once the sunset period has expired. In other words, retrospective operation would mean that 'defaulting' purchasers with existing contracts to which the *Land Sales Act 1984* applies, would no longer be able to take advantage of the ambiguity.

There are cases where sellers have commenced litigation to seek specific performance of the purchaser's obligation to settle. This is also in full knowledge that the existing interpretation of section 27 leaving the purchaser the right to terminate. It is also understood some purchasers are fully aware of the existing interpretation and have expectations of their existing statutory right.

The amendment is proposed to commence from 12.00am (i.e. midnight) on the day it was introduced into the Parliament.

Applying the proposed amendment to all existing contracts, regardless of court proceedings, will mean vendors can continue with their existing court proceedings or instigate proceedings, without being concerned with purchasers terminating the contracts due to the ambiguity of section 27.

It is understood there are vendors with existing contracts for proposed lots with a cumulative value in the hundreds of millions of dollars. If purchasers choose not to settle in light of the existing interpretation of section 27, vendors are left with two options without the amendment. They are, to take the risk of seeking a court order for specific performance and hope it will be granted within the sunset period or, to terminate the contract because of the purchaser's default. It is understood the risk is higher in seeking a court order as the settlement dates are usually very near to the end of the sunset period. It is understood vendors are deciding to choose termination of contracts as they know they can, under the contracts, keep the paid deposits.

If a defaulting purchaser terminates a contract under the existing interpretation of section 27, the vendor must return the deposit to the purchaser. This approach leaves the vendor in the position of no return on its investment and also facing new marketing and selling costs for the now completed but unsold lot. It is for these reasons that retrospective application is considered justified.

Consultation

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The Office of the Queensland Parliamentary Counsel was consulted on the amendment of the commencement provisions of the Bill and on the amendment to remedy a cross referencing error in the Bill.

Lion (Milton Brewery) was consulted on its concerns regarding the new requirement to seek renewal of registration after ten years.

Three of the proposed amendments implement recommendations of the Parliamentary Transport and Local Government Committee Report No. 9: *Sustainable Planning and Other Legislation Amendment Bill 2011*. The Report followed an extensive public consultation process including a call for submissions and public hearings that were held on 14 December 2011.

Land Sales Act 1984

Norton Rose Australia, a legal firm representing developers was consulted in relation to the drafting of the proposed amendment to the *Land Sales Act 1984*. Additionally, representatives from the Property Council of Australia, Queensland Law Society, Allens Arthur Robinson and the Law Faculty of the Queensland University of Technology, were also consulted on the amendment. The Department of Environment and Resource Management and the Department of Local Government and Planning were also consulted.

Local Government Electoral Act 2011

The Electoral Commission of Queensland and the Local Government Association of Queensland were consulted and support the amendment of the *Local Government Electoral Act 2011*.

City of Brisbane Act 2010

The amendment of the *City of Brisbane Act 2010* is supported by the Brisbane City Council, which requested the amendment in its submission to the Parliamentary Transport and Local Government Committee inquiry on the Bill.

Notes on provisions

Sustainable Planning and Other Legislation Amendment Bill 2011

Amendment 1

Amends clause 2 (Commencement) to change the commencement arrangements for the Bill to facilitate the concurrent commencement of *Sustainable Planning Act 2009* and particular *Building Act 1975* provisions, to allow adequate time for the development of subordinate legislation to the *Plumbing and Drainage Act 2002* and stakeholder awareness of the new requirements, and to provide for the commencement of the *Land Sales Act 1984* amendments. Specifically, part 3, other than sections 5 to 9, 16, 17, and 19(2) and (3), and part 6 will commence on 1 November 2012 or another day before November 2012 fixed by proclamation. Part 4A will be taken to have commenced on 15 February 2012.

Land Sales Act 1984

Amendment 2

Inserts new Part 4A Amendment of Land Sales Act 1984

Amends the Bill to insert after clause 22, new part 4A.

Inserts clause 22A (Act amended)

Provides for the amendment of the *Land Sales Act 1984*.

Inserts clause 22B (Amendment of s27 (Purchaser's rights if not given a registrable instrument of transfer within a certain period))

The amendment made by the clause amends section 27(1)(b) of the Act by inserting additional words to remove the ambiguity of the existing provision. Specifically, the additional requirement must be satisfied in order for section 27 to apply. That is, the purchaser must not be in default under the instrument.

Inserts clause 22C (Insertion of new s 37 (Transitional provision for Sustainable Planning and Other Legislation Amendment Act 2012))

The new section 37 inserted by this clause is a transitional provision giving effect to the retrospective application of the amendment to section 27. The amended section 27 would therefore apply to contracts made but not settled before commencement of the amendment, or to contracts entered into on or after commencement. In relation to contracts made but not settled before commencement, the amended section 27 applies regardless of whether the sunset period ended or ends before, on or after commencement, and even if an action for specific performance has been started by the vendor, but not completed, before commencement.

The purpose of this retrospective application, as indicated in the fundamental legislative principles section of these Explanatory Notes, is to prevent buyers under existing contracts refusing to settle and allowing the sunset period to lapse, thereby taking advantage of the ambiguity in section 27.

Local Government Electoral Act 2011

Amendment 3

Inserts new Part 5A Amendment of Local Government Electoral Act 2011

Amends the Bill to insert after clause 29, new part 5A.

Inserts clause 29A (Act amended)

Provides for the amendment of the *Local Government Electoral Act 2011*.

Inserts clause 29B (Inserts new s210 (Cut off day for compiling voters rolls for quadrennial election of 2012))

Clause 29B inserts new section 210 (Cut off day for compiling voters roll for quadrennial election for 2012) into Part 11 of the *Local Government Electoral Act 2011*.

On 10 February 2012, the *Local Government Electoral Regulation 2012* deferred the date of the 2012 local government quadrennial elections to 28 April 2012. In the absence of that regulation, section 23 of the *Local*

Government Electoral Act 2011 would have ordinarily required the 2012 local government quadrennial elections to be held on 31 March 2012 (the last Saturday in March).

Currently, section 18 of the *Local Government Electoral Act 2011* provides for the close of the voters roll two months prior to the date on which the local government quadrennial elections would be held.

Given the 2012 local government quadrennial elections have been deferred by one calendar month, this amendment inserts clause 29B (new section 210) to provide that despite the operation of section 18(1) of the *Local Government Electoral Act 2011*, voters may still enrol or amend their enrolment up until two months before the date of the 2012 local government quadrennial elections. Accordingly, new section 210 provides that, for the purposes of the 2012 local government quadrennial elections only, the voters roll must be compiled at 25 February 2012.

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Amendment 4

Amends clause 94 to provide that the approved form may state that certain information is mandatory information that must be provided by an applicant applying to the Minister for the registration of the premises and that an application fee may be prescribed under a regulation.

Amendment 5

Amends clause 94 to provide that if the term of registration of the premises is more than 10 years it must be stated on the notice to the applicant.

Amendment 6

Amends clause 94 to provide that if in considering the details of an application for registration the Minister considers a longer term of registration is appropriate for the premises, the Minister may grant a registration term of at least 10 years, but not more than 25 years.

Amendment 7

Amends clause 111 to correct references in section 38 (Division 1, process applies) subsections (e and f) to correctly reference subsections (1), (5) and (6) of section 31 (Ministerial power to amend submitted scheme).

Amendment 8

Amends clause 129 of the Bill to correct punctuation marks and to insert a new clause 136E (Consultation with public sector entities before entering in particular infrastructure agreements).

The new clause clarifies that the requirement to consult applies if the proposed infrastructure agreement is likely to continue to apply to land after the land ceases to be in an urban development area. It requires that the Urban Land Development Authority consult with public sector entities that are likely to be involved with the infrastructure agreement, about the terms and arrangements of the infrastructure agreement, before entering into the agreement.

The amendment includes definitions for public sector entities and superseding public sector entities.

City of Brisbane Act 2010

Amendment 9

Inserts City of Brisbane Act 2010 in Schedule (Acts amended)

Amends the Schedule (Acts amended) to insert the *City of Brisbane Act 2010* in the Acts to be amended by the Bill.

Inserts clause 1 (Replacement of s121(1)(d) ('was carried out under' –)

Clause 1 replaces section 121(1)(d) of the *City of Brisbane Act 2010* to clarify that the provision also applies to inspecting work that was the subject of, as well as carried out under, a permit or notice. In particular, it clarifies that the provision captures work that is the subject of section 87(2) of the *Plumbing and Drainage Act 2002*.

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Amendment 10

Inserts replacement Long title

Amends the long title of the Bill to reflect that the Bill also amends the *City of Brisbane Act 2010*, *Local Government Electoral Act 2011* and the *Land Sales Act 1984*.

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