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STATE DEVELOPMENT AND REGIONAL INDUSTRIES COMMITTEE

Members present:

Mr CG Whiting MP—Chair
Mr JJ McDonald MP
Mr MJ Hart MP (virtual)
Mr RI Katter MP (virtual)
Mr TJ Smith MP

Staff present:

Ms S Galbraith—Committee Secretary
Dr V Lowik—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE PLANNING AND OTHER LEGISLATION (MAKE DEVELOPERS PAY) BILL 2023

TRANSCRIPT OF PROCEEDINGS

Monday, 12 February 2024

Brisbane

MONDAY, 12 FEBRUARY 2024

The committee met at 9.31 am.

CHAIR: Good morning. I declare open this public briefing for the committee's inquiry into the Planning and Other Legislation (Make Developers Pay) Bill 2023. My name is Chris Whiting. I am the member for Bancroft and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all share. With me today are: Mr Jim McDonald, the member for Lockyer and deputy chair; Mr Michael Hart, the member for Burleigh, who is joining us via videoconference; Mr Robbie Katter, the member for Traeger, who is also joining us via videoconference; and Mr Tom Smith, the member for Bundaberg.

This briefing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the briefing at the discretion of the committee.

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BERKMAN, Mr Michael, Member for Maiwar, Parliament of Queensland

CHAIR: Thank you for joining us. I invite you to brief the committee, after which committee members may have some questions for you.

Mr Berkman: Thanks to the committee, the secretariat and Hansard for facilitating this briefing today. I want to open by acknowledging that the committee is sitting today on the unceded sovereign land of Aboriginal people and acknowledge the sovereignty of the Yagara and Turrbal people. I pay my respects to eldest past and present and recommit to working with them and future leaders towards treaty and truth-telling and to address the ongoing impacts of colonisation on First Nations communities across the continent.

I will start this briefing by acknowledging that the majority of submissions support the bill or at least the intent of the bill. I would suggest this reflects the broad consensus, especially in submissions from local governments, that the cost of providing local infrastructure is currently not being met. This is quite clearly an issue that needs to be addressed. It raises the question whether the true cost of local government infrastructure will be met by ratepayers or the developers who are profiting from the densification and growth of our communities.

It is important to remember that this bill does not by itself lift infrastructure charges; it just allows councils the flexibility to set those charges at the appropriate level. The bill proposes no change to section 120 of the Planning Act, which limits these charges to the extra demand placed on trunk infrastructure by a given development. Arguing to retain the cap is, in essence, arguing that the state government should be able to limit the amount councils can charge to the point they cannot recover the cost of delivering additional infrastructure to accompany new developments.

I want to briefly address one issue I covered in my written response to submissions. I understand that the committee has not had a chance to publish that yet, so I seek leave to table that response.

CHAIR: It is so tabled.

Mr Berkman: As I mentioned, this issue was addressed very briefly in response to the assertion of some submitters that increased infrastructure charges would be passed on to homebuyers, thus increasing house prices and worsening the housing crisis. In terms of the domestic research that was referred to by those submitters—that is, research conducted here in Australia—it is important to note that the so-called empirical evidence relied on by these submitters is a single Brisbane

study that was conducted as the basis of a PhD thesis published in early 2015. The research relied on data which is now at least 13 years old. I would suggest that the committee should be very cautious in accepting the findings presented by those submitters—specifically submitters 4 and 14—and consider carefully the other findings of this study which, if accepted as a whole, are very concerning.

The study suggests that infrastructure costs are being overpassed. That is, it asserts that new home buyers are being charged nearly five times the actual amount of infrastructure charges being paid by developers. The figure arrived at in that study was around 470 per cent. If the committee is inclined to rely on this study as evidence of the concerns raised by submitters 4 and 14, I suggest it is worth inquiring of them how they think this kind of price gouging by developers is justified, or does this otherwise affect how they might seek to rely on that study? The study itself, importantly, does note that it is subject to a number of limitations as the first study of its kind in Australia, so that is something which is also important for the committee to bear in mind. I am happy to take any questions you might have.

CHAIR: I will start off by going through the general theme of some of these submitters. For example, the UDIA says that the bill fails to understand the realities of delivering houses; infrastructure charges are one of the economic inputs that flow into delivering products; and if you expanded infrastructure charges, some of those projects would fall over because they become too expensive to provide. That seems to be the fairly strong theme from a lot of the bodies that have put in submissions. My question really is—and I think I asked you this last time: have you liaised with some of the peak bodies or individual developers? Have they been involved in preparing the bill or have you consulted with them in the preparation of this bill?

Mr Berkman: The key inputs we looked at have been persistent feedback from local governments for some years now about the difficulties they are having in delivering local government infrastructure. The Housing Industry Association, the UDIA and those submitters you referred to have clearly taking a position that represents developers—those who are in amongst the national housing crisis who are continuing to profit quite handsomely. The submitters that represent local government interests, on the other hand, have persistently said—and we heard this more than a couple of years ago from the LNP mayor in Brisbane—that the infrastructure cap should be removed because it is restricting their ability to offer local infrastructure that is necessary and appropriate for communities as they expand and grow. That movement from the southern states into Queensland has been ongoing for quite some time now. That is the key feedback and input we have been focused on in developing this policy position in this bill.

Reflecting on the position of the Brisbane City Council on this, it is a little bit confused and a bit troubling in the way they have since offered really significant infrastructure charge discounts to a large number of developers in the BCC area. While that position is quite confused, there has been a very consistent message coming from local governments that they need that cap removed and they need the facility to charge more in infrastructure charges from developers.

CHAIR: One possible effect of the removal of caps on local governments is a race to the bottom. Some of the larger, more financially strong councils can really reduce those charges and attract industry, while smaller councils that do not have the capacity to reduce infrastructure charges will have to keep them up. The bigger ones can drop their infrastructure charges to attract people, but in other areas further out, for example, they cannot really drop them and they may be kept out of this race by the larger councils that are dropping infrastructure charges for economic reasons. That is one possible scenario.

Mr Berkman: To be perfectly frank, I do not think that is a scenario the committee should be concerned with, because there is currently no lower limit on infrastructure charges. If that was a scenario that was likely to play out there is nothing to prevent it from happening, so I do not see there is a real risk that should weigh into the committee's consideration.

Mr McDONALD: Thank you, Mr Berkman, for being here today. I have a couple of questions. Firstly, with regard to evidence we received in the housing availability and affordability bill we heard that one of the reasons for the undersupply or underavailability of housing, both individual properties and units, is the inability to sell those products to the market because of the very high cost. My concern is that any changes to this are going to increase the cost and inability of people to afford a house or unit.

Mr Berkman: As I said in my introductory statement, the bill does not in and of itself increase infrastructure charges; it creates flexibility for councils to set a broader range of infrastructure charges as is appropriate. In the grand scheme of things, infrastructure charges, compared to broader challenges in the construction sector, are not an enormous contributor to the cost of putting forward

a development—at least as far as I am aware. Ultimately, councils are going to be left in a position where they do not provide necessary local infrastructure, fund it through higher infrastructure charges on developers or fund it through higher rates on existing ratepayers. Broadly speaking, at the moment infrastructure is just not being provided. This is intended to fall in line with the reflections of all of those local governments that made submissions—including, as I mentioned before, the BCC Lord Mayor's observations from just a couple of years ago—that the cap needs to be removed.

Mr McDONALD: One of the pieces of evidence from a recent article was from the UDIA, which said that at the time of a housing crisis governments should not do anything; they should just leave things alone unless it is going to make it better. Every bill costs and every bill changes things for developers and the market and what have you, so the argument is that any changes are going to make it even worse. Do you think that is the case?

Mr Berkman: No. I think that is a very predictable argument from the UDIA as a body representing the development industry. The argument that free markets are going to ultimately serve everyone's best interests is clearly not the case. We have been talking about the housing crisis for some years now, and what benefit have we seen the free market drive? There are no solutions coming forward from private operators or the market generally. I think there is clearly a need for government intervention to fill that gap in especially public housing but also community housing and social housing more broadly. That is quite a separate issue, I would suggest.

There is obviously some overlap in the way, as I mentioned before, for example, BCC is approaching the question of seeking to support some community housing by completely removing infrastructure charges. That again just digs this hole a little deeper. It takes away another revenue stream for the provision of local infrastructure. Going again directly to that evidence that the UDIA has presented in a different inquiry on a different bill, I think it is a fool's errand to assume that governments can just get out of the way and the housing crisis will solve itself with the usual players in the private market providing solutions.

Mr McDONALD: In your opening you made the statement that it will stop price gouging by developers, or something similar to that. It was definitely 'price gouging by developers'. What evidence do you have of that price gouging?

Mr Berkman: That was a reference specifically to the study that is relied on by the Housing Industry Association and the UDIA. They have referred to that single study—a 2015 QUT study. The finding of that study was, as those submitters have relied on, that infrastructure charges are passed on to homebuyers, so they are reflected in the price of new homes and existing homes when they are sold. The study also found that they were not just passed on as a one-for-one cost but that the costs were in fact passed on at something like a 470 per cent inflated amount for new houses and something like 350-odd per cent for existing houses, so that is the price gouging that I am talking about. If that is in fact the reality and new home buyers are being charged not just 100 per cent of the infrastructure charges but 470 per cent, I think there are very few ways you could describe that other than price gouging.

Mr McDONALD: Sure. Do you have any more recent evidence than that study, because it was released in 2015 and obviously the evidence of that was before that, so it is probably 10 years old?

Mr Berkman: As I said, the data that is relied on in that study is more than 13 years old. I am not aware of anything that has been done more recently, and certainly the submissions do not refer to any more recent evidence around that question of passing on the cost of infrastructure charges.

Mr SMITH: Thank you, member, for being here. I am just reading through the act and your proposal. You are looking to omit completely 112 to a maximum adopted charge completely, so therefore there is no cap whatsoever that can be applied; is that correct?

Mr Berkman: That is right, yes.

Mr SMITH: Do you feel as though potentially that takes away from the role of state government ensuring that local governments are financially, I guess, responsible for their actions? By keeping the cap on local governments and giving them some room to move within, it does then stop some councils that may be more strapped for cash trying to apply all of the cost to the developer and then potentially hurting themselves. There are some councils where the councillors are very good people but they may not necessarily be as financially sound as some of our larger councils. Do you think it is important that state government has some sort of oversight on the way that local governments manage their finances and apply those?

Mr Berkman: Oversight is fine. Local governments are entirely a creature of statute and they exist at the discretion of state government, but I think the downside—the negative consequences—of the cap outweighs that risk to the extent that it even exists. I do not know, but I think it is maybe

selling local governments a little bit short to suggest that they are going to take such a ham-fisted approach as to damage themselves. Should they do so, then obviously local government elections are a short cut to dealing with that kind of mismanagement of local government. The key priority needs to be the adequate provision of local government infrastructure, which we are not seeing at the moment, and the consequences, I know from my community, are very real. It is footpaths that are not accessible for people with any kind of impaired mobility. It is this indefinite postponement of vitally important active transport infrastructure and two green bridges that have been just pushed off into the never-never. Council needs to be able to progress projects like this that are just fundamentally important for creating space and connection in communities. We see constantly there is this removal of little patches of green space in communities like mine that is so important, yet I cannot think of an example where council has in recent years acquired new parkland, which is fundamentally the backyard for all of these families that are now moving into units. The context for each local government is different, but I think they are the ones best positioned to understand the needs of that community and to manage the most appropriate infrastructure charges without this arbitrary imposition of the cap by the state.

Mr SMITH: This question is still relevant to the bill, but it may stray slightly. In the legislation it says that if it is a state government project then the fees do not apply. We are trying to team up more now with community housing providers and we might take a bit of a shared approach, so it might be that 60 units are going to be built where the state government is going to fund 20 of those units and fund the build of those. Noting that this is not necessarily in your bill, is there consideration as to how councils apply that rule now where there is that mixed share of the infrastructure charges? In an element like that, do you know if councils are breaking down the split between 20 and 40 and saying, 'Community housing developer, you have to pay trunk infrastructure on what would equate to the 40 units and the impact that would have,' and then, 'State government, you're not paying that 20,' so therefore the community housing provider is really putting up for 60?

Mr Berkman: I would imagine that is going to vary quite dramatically depending on what the arrangement is between a particular community housing provider and the state and depending on which local government area the development is in. As I touched on before, BCC has made this announcement recently that community housing will get a 100 per cent discount on all of the infrastructure charges that might otherwise be applied. That is just an example of how dramatically a local government's approach might vary without even taking into account the specific details of the funding agreement or the corporate structure of any development that is being done collaboratively by the state and community housing providers. The short answer is that I do not think it is something we can really answer.

Mr SMITH: No, and it is probably a better question for the department to provide a more detailed answer as to the interpretation of that.

CHAIR: Yes. As Jim would know from council's point of view, councils always, shall we say, noted that any state government development where they did not pay those charges rankled.

Mr HART: Michael, I wonder whether you had considered whether the state government should be obliged to pay infrastructure charges for projects they put in place.

Mr Berkman: Yes. I absolutely think that should be the case. It is one of those fraught areas where obviously the state has an awful lot of discretion as to how it cooperates or participates in local government infrastructure funding. I look at the couple of projects in my electorate that I referred to before and that I am intimately familiar with: those two green bridge projects from Toowong and St Lucia to West End. Those are not simply local projects. They are not going to only benefit people in the local area. Those are absolutely the kinds of infrastructure projects that council is responsible for, but the state and the federal government, I would argue, should be coming to the party and providing funding for those. I realise that is a slightly different question from whether infrastructure charges, per se, should be met by the state, but I guess it just goes to demonstrate the slightly murky relationship between state and local governments when it comes to funding these big projects specifically or local infrastructure needs more generally. The bottom line, though, is: yes, I agree. I think the state should be helping more and spending more on local infrastructure.

Mr HART: What about the sort of infrastructure that would assist the community in general? Do you think it is right that developers should have to pay for all of that infrastructure? If you put a pipeline into a new development and the developer is paying for that particular bit of infrastructure but that also assists the 40 or 50 houses next door, should the developer still have to pay 100 per cent of that infrastructure? Is that the way you are thinking about this, or do you have a different view on that?

Mr Berkman: The proposal in the bill and the position that I am pursuing with this bill is that the cap should be removed and local governments should have flexibility. Yes, it is clear that lots of various types of infrastructure will benefit the broader community but, equally, existing community infrastructure that is currently enjoyed by the community that does not have to be paid for by new developments will be impacted and will be used by people in those new developments, so it cuts both ways.

Mr HART: Yes.

Mr Berkman: I do not think it is unreasonable given the kinds of profits that are being enjoyed by developers still in a construction sector where construction companies are folding almost as a matter of course at the moment and tradies are operating on wafer-thin margins compared to those of developers. I think it is reasonable to shift more of that cost onto developers.

Mr HART: So you want to remove the cap completely, but all of the council submissions suggest that the cap should be increased but not removed. Did you consider that at all—increasing the cap rather than removing it?

Mr Berkman: If that is the way the state chooses to go then that is obviously a welcome improvement. I suppose the position I would put is that councils are best positioned to understand the needs of their community and the balance of all of these factors in ensuring they are providing the infrastructure the community needs. I think the most straightforward way to deal with it is to remove the cap, quite frankly.

Mr HART: Michael, my concern is that by removing the cap you take away that certainty from someone who is doing some development that that is the maximum they will have to pay. I am hearing from developers—I do not know about the other members—that they are suddenly getting this last-minute infrastructure charge that is a huge amount more than they were anticipating and it makes their whole project unviable. That is my concern with removing the cap. I do not have any issue with raising the cap, but I think removing it is a bit of a problem—from my point of view, anyway.

Mr Berkman: I have to say that I am curious as to how developers could currently be having these additional infrastructure charges sprung on them, given the way that the cap effectively serves as a default charge, but that can perhaps be an issue for yourselves on the committee.

Mr HART: Yes. They seem to be paying up to the cap all the time now, apparently.

CHAIR: The member for Traeger does not have any questions, so that brings us to the conclusion of this briefing. We do not have any questions on notice. Thank you to everyone who participated today. Thank you, member for Maiwar, for bringing this bill forward for us. Thank you to Hansard and our secretariat. A transcript of these proceedings will be available on the committee's webpage in due course. I declare this public briefing closed.

The committee adjourned at 9.59 am.