Submission No. 087
26 June 2014
11.1.22

26 June 2014

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

Dear Sir / Madam

The Local Government Association of Queensland (LGAQ) welcomes the opportunity to provide a submission on the State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014 ("the amending Bill").

The LGAQ submission (with particular support from the Logan City Council) responds exclusively to the proposed amendments to the *Economic Development Act 2012* focusing on two particular aspects of the amending Bill, namely:

1. The proposed infrastructure expenses recoupment charge regime (clause 17 of the amending Bill); and
2. The broadened ability to declare provisional priority development areas (clauses 5 and 6 of the amending Bill).

With regard to the proposed infrastructure expenses recoupment charge regime, the LGAQ has already contributed significant resources and analysis to assist the State Government to better address the issue of determining and levying a Special Infrastructure Levy on land that is, or was, within a priority development area.

The LGAQ is disappointed no discussion or analysis was offered by the State Government prior to the introduction of the amending Bill addressing the concerns raised in the LGAQ submission, dated 26 June 2013 (**Appendix 1**).

The LGAQ welcomes the opportunity to further discuss the matters raised in this submission at a mutually convenient time.

Please don't hesitate to contact either myself on 3000 2245 [redacted] or Mr Luke Hannan, LGAQ Manager Advocacy – Planning, Development & Natural Environment on 3000 2226 [redacted]

Warm regards

Greg Hoffman PSM
GENERAL MANAGER – ADVOCACY

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

Submission

Local Government Association of Queensland Ltd

26 June 2014

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association setup solely to serve councils and their individuals' needs. The LGAQ has been advising, supporting and representing local councils since 1896, allowing them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places that count; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and delivering them the means to achieve community, professional and political excellence.

Introduction

The Local Government Association of Queensland (LGAQ) welcomes the opportunity to provide a submission on the State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014 ("the amending Bill").

The LGAQ Submission (with particular support from the Logan City Council) responds exclusively to the proposed amendments to the *Economic Development Act 2012* focusing on two particular aspects of the amending Bill, namely:

1. The proposed infrastructure expenses recoupment charge regime (clause 17 of the amending Bill); and

2. The broadened ability to declare provisional priority development areas (clauses 5 and 6 of the amending Bill).

With regard to the proposed infrastructure expenses recoupment charge regime, the LGAQ has already contributed significant resources and analysis to assist the State Government to better address the issue of determining and levying a Special Infrastructure Levy (SIL) on land that is, or was, within a priority development area (PDA).

In the LGAQ's Submission, dated 26 June 2013 (the June Submission), to the Department of State Development, Infrastructure and Planning an analysis of the issue within current legislation was provided with solutions, including necessary additional sections (**Appendix 1**). The key features of the June Submission included:

- A liability to pay the SIL continues, notwithstanding that the applicable PDA may be amended or revoked;

- The land to be burdened with the SIL is clearly defined, without the need for any entity to establish special benefit or special need;

- The amount of the SIL is determined by regulation;

- The regulation can accommodate the circumstance of a lot owner paying the 30 year contribution "up-front";

- The quantum of the SIL is to be first agreed upon between MEDQ and the relevant Council or, if agreement cannot be reached, as assessed by an independent mediator;

- The relevant Council levies the SIL;

- A limited right of appeal (to MEDQ) against the levying of the SIL is available;

- The SIL can be levied by the Council as part of a rates notice or as a separate notice;

- The SIL collected must be used by the relevant Council for the purpose of providing infrastructure to the PDA; and

- An unpaid SIL can be recovered in the same way that overdue rates and charges can be recovered.

The LGAQ is disappointed that no discussion or analysis was offered by the State Government prior to the introduction of the amending Bill. Given the importance of these amendments to local governments' financial sustainability and liability this limited engagement is considered at odds with the provisions and principles of the *Partners In Government Agreement*.

Detailed Comments on the Amending Bill – Key Concerns for Local Government

1. Infrastructure Expenses Recoupment Charges – clause 17 of the amending Bill

1.1 Background

This particular part of the submission addresses the proposed infrastructure expenses recoupment charge regime, detailed in clause 17 of the amending Bill.

The LGAQ's June Submission sets out, in detail, the local government's existing concerns with respect to the *Economic Development Act 2012*, particularly in relation to determining and levying an infrastructure levy on land that is, or was, within a PDA. The LGAQ's concerns remain, particularly in relation to levying and recovery of the proposed SIL identified in the "Infrastructure Funding Framework" dated July 2013.

1.2 Primary issue – Method of levying and recovery of charge

In the June Submission, the LGAQ suggested a mechanism to recover the requisite charge on an annual basis, following consultation and agreement being reached between MEDQ and the relevant local government. The June Submission also included recommended legislative amendments to give effect to this levying and recovery model. Notwithstanding what is proposed by the amending Bill, the LGAQ still consider that the mechanism proposed in the earlier submission is the most appropriate method of addressing the issue.

The LGAQ respectfully requests that the June Submission be re-considered as the preferable mechanism for levying and recovery of the SIL.

1.3 Other concerns

If the State is not prepared to re-consider the mechanism proposed by the LGAQ's June Submission, the State is nevertheless asked to consider the following concerns which the LGAQ has identified with certain aspects of the amending Bill.

<u>1.3.1 Infrastructure expenses recoupment charge – recovery of expenses incurred by Councils (as opposed to MEDQ)</u>

One of the LGAQ's primary concerns is that the amending Bill only proposes to address recovering "expenses" incurred, or expected to be incurred, by MEDQ (see proposed section 116B). So far as Logan City Council is concerned, for example, it is presently constructing infrastructure for the benefit of the PDAs in its local government area. It would appear, based on the present drafting, that these costs are incapable of being recovered through the infrastructure expenses recoupment charge proposed by section 116B.

It is accordingly requested that section 116B be re-drafted to ensure that local government costs (such as those presently being incurred in the PDAs in Logan City) are capable of:

1. Forming part of an infrastructure expenses recoupment charge; and

2. Being reimbursed to Councils, immediately following the levy and collection of same by MEDQ.

1.3.2 Local government agreement to the authorising instrument/infrastructure expenses recoupment charge

Another of the primary concerns is that the authorising instrument (see proposed sections 116B and 116C) does not include any local government involvement in the setting of the amount of the charge, or the rate by which the amount of the charge can be increased. As demonstrated in the LGAQ's earlier submission (page 4, paragraph 5 and proposed section 117C), affected local governments should be consulted, and agreement reached about the amount of the proposed infrastructure expenses recoupment charge, prior to it being set by MEDQ.

It is accordingly requested that sections 116B and/or 116C be re-drafted to ensure that agreement is reached with affected local governments about the amount of the proposed infrastructure expenses recoupment charge, prior to determining an authorising instrument for the making and levying of an infrastructure expenses recoupment charge.

1.4 Comments on the 'mechanics' of the proposed infrastructure expenses recoupment charge regime

Again, if the State is not prepared to re-consider the mechanism proposed by the LGAQ's earlier submission, the State is nevertheless requested to consider the above concerns and the following comments which have been identified with respect to the 'mechanics' of the proposed infrastructure expenses recoupment charge regime.

1.4.1 Proposed section 116B – what is an expense?

On the assumption that the State accepts that the operation of section 116B will be expanded to include costs incurred by participating Councils in providing infrastructure to PDAs, section 116B should be amended to make it clear that the term "expense" includes the financing costs incurred by Councils in making infrastructure available now and in the immediate future, in circumstances where recovery of that cost from landowners will occur over an extended period of time.

1.4.2 Proposed section 116C – overall plans in an authorising instrument

In proposed subsection 116C, subsections (1)(a)(iii) and (2), reference is made to the requirement to have an overall plan. As noted in the June Submission, a special charge of the Somerset Regional Council was determined by the Supreme Court as invalid because of the Council's failure to have an overall plan in place, prior to commencing the work the subject of the special charge. Since that time, the Gold Coast City Council has had a special charge declared invalid by the Supreme court for similar reasons (see *E Cocco & Sons Investments Pty Ltd v Gold Coast City Council* [2014] QSC – judgment delivered on 14 February 2014).

In order to reduce the risk of legal challenge to infrastructure expenses recoupment charges, it is requested that subsections (1)(a)(iii) and (2) of section 116C be deleted.

1.4.3 Proposed section 116C – pre-payment of charges

It is not clear whether the section permits an authorising instrument to allow for ratepayers to pay the entire infrastructure expenses recoupment charge as a one-off/upfront payment. This is an issue addressed in the LGAQ's alternative regime (see proposed section 117C(3) forming part of the LGAQ's June Submission).

It is requested that section 116C be amended to accommodate this scenario.

1.4.4 Proposed section 116G – charge notice

The LGAQ does not object to MEDQ, whilst it has control of a PDA, recovering a relevant charge by way of a charge notice, as proposed by this section.

However, if a local government subsequently becomes the charging entity, local governments should be given the discretion to recover the charge by a charge notice, or as an item on its rate notice (as per proposed section 117G forming part of the LGAQ's June Submission).

It is requested that section 116G be amended to accommodate this scenario.

2. Broadened ability to declare provisional priority development areas ("PPDAs") – clauses 5 and 6 of the amending Bill

The explanatory notes for the amending Bill, at page 1, state that:

> "Experience with consideration of PPDAs has revealed issues with the requirement for a PPDA to be consistent with a local planning instrument. The Bill removes this impediment and recognises other planning instruments, such as the Regional Plan. This will allow PPDAs to foster economic development and development for community purposes."

Similar comments are made in the explanatory notes for clauses 5 and 6 (page 19) of the amending Bill.

The rationale for this amendment is insufficient. The LGAQ seeks detailed justification on why it is necessary to allow PPDAs that are inconsistent with a local planning instrument and community expectations. The proposed amendments will substantially change the scope, purpose and function of the PPDAs as currently envisaged under the *Economic Development Act 2012*. In this regard, specific reference is made to the explanatory notes for clause 34 of the original Bill (ultimately section 34 of the Act), where it is stated:

> "Provisional PDAs are intended to apply in very limited circumstances only where development can be brought to the market quickly and where the development is consistent with community expectations…
>
> ...The declaration may only be made if the area is a discrete site proposed to be used for a discrete purpose; the type, scale, intensity and location of the development is of the site is consistent with the relevant local government's planning scheme applying in the area and there is an overriding economic or community need to start the proposed development quickly. These requirements recognise the absence of community consultation in the making of provisional land use plans, compared with the making of development schemes required for PDAs.
>
> Provisional PDAs are intended to provide for development that is consistent with community expectations as expressed in the local government's planning scheme. An example is the proposed development is a use that is the same use proposed under the planning scheme although it may be at an increased intensity. Development sites are generally small, distinct sites containing single uses, where development can be progressed swiftly utilising the planning regime of this Act and brought to the market generally within the life of the provisional PDA.
>
> It is not intended that provisional PDAs be declared to replace the need for making a development scheme in all PDAs. Where there is greater complexity of scale, land use, intensity and impacts, the declaration of a PDA is required along with an interim land use plan followed by the making of a development scheme."

In the absence of satisfactory justification for this amendment, the LGAQ submits that the amendments detailed in clauses 5 and 6 be withdrawn.

Conclusion

The LGAQ looks forward to a favourable consideration of the foregoing submission. The LGAQ would also welcome the opportunity to further discuss the matters raised in this submission at a mutually convenient time.

Appendix 1 –

LGAQ Submission on the *Economic Development Act 2012* and Special Infrastructure Levies, dated 26 June 2013

LGAQ
LOCAL GOVERNMENT ASSOCIATION OF QUEENSLAND

26 June 2013

Mr David Edwards
Director General
Department of State Development, Infrastructure & Planning
PO Box 15009
CITY EAST QLD 4002

Dear David

Submission on the Economic Development Act 2012 and Special Infrastructure Levies

I write to you enclosing the LGAQ's Submission identifying legislative concerns and proposed solutions in regards to the application of a special infrastructure levy ("SIL") under the *Economic Development Act 2012*.

The LGAQ Submission is made with the full support of the Logan City Council and seeks amendments to better address the issue of determining and levying a SIL on land that is, or was, within a priority development area. Although the immediate catalyst for this submission is the proposed SIL for the Greater Flagstone and Yarrabilba Priority Development Areas ("the PDAs"), it is the LGAQ's position that the amendments sought will better address the issue for the State and all other local government areas where a SIL is being considered.

It has also been brought to our attention that at present, lots are being sold in the respective PDAs at a rapid rate. However, incoming purchasers are being provided with extremely limited detail about the existence, and quantum, of the proposed SIL. The LGAQ is therefore of the view that the State Government needs to give this matter its urgent attention.

The LGAQ looks forward to a favourable consideration of the enclosed submission as soon as possible. The LGAQ and Logan City Council would also welcome the opportunity to further discuss the matters raised in this submission at a mutually convenient time.

Please do not hesitate contacting either myself or Mr Greg Hoffman PSM, General Manager – Advocate, on 3000 2240, to discuss any of the enclosed further.

Kind regards

GREG HALLAM PSM
CHIEF EXECUTIVE OFFICER

cc: Chris Rose, Chief Executive Officer, Logan City Council

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Local Government Association Of Queensland Ltd.
ABN 11 010 883 293 **ACN** 142 783 917

Economic Development Act 2012
Special Infrastructure Levies

LGAQ Submission

26 June 2013

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association setup solely to serve councils and their individual needs. The LGAQ has been advising, supporting and representing local councils since 1896, allowing them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places that count; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and delivering them the means to achieve community, professional and political excellence.

Introduction

This submission is made by the Local Government Association of Queensland ("LGAQ") (with the full support of the Logan City Council ("Council")) seeking amendments to the *Economic Development Act 2012* to better address the issue of determining and levying a special infrastructure levy ("SIL") on land that is, or was, within a priority development area. Although the immediate catalyst for this submission is the proposed SIL for the Greater Flagstone and Yarrabilba Priority Development Areas ("the PDAs"), it is the LGAQ's position that the amendments sought will better address the issue for the State and all other local government areas where a SIL is being considered.

At present, lots are being sold in the PDAs at a rapid rate. However, incoming purchasers are being provided with extremely limited detail about the existence, and quantum, of the proposed SIL. The LGAQ is accordingly of the view that the State Government needs to give this matter its urgent attention.

The proposed Special Infrastructure Levy for Greater Flagstone & Yarrabilba

According to the Infrastructure Funding Framework dated October 2012, the 3 potential infrastructure charges for a PDA are a local charge, a value capture charge and a SIL.

A SIL is to be levied for a period of 30 years from the creation of a new lot pursuant to a PDA development approval and is payable by the lot owner. Whilst not stated in the *Economic Development Act 2012*, it is acknowledged that the proceeds of the SIL are to be provided to the Council. Given the PDAs will be developed over a number of years, it will be necessary to levy the SIL for a period well in excess of 30 years.

The Infrastructure Funding Framework identifies a flat rate residential SIL of $206 per lot for both the Greater Flagstone and Yarrabilba PDAs, although, based on the Council's estimate, the rate for each PDA would be materially different if separate levies were made.

It is the understanding of the LGAQ and Council that MEDQ will make and levy the SIL, relying on its special rates and charges power found in chapter 3, part 6 of the *Economic Development Act 2012*.

Notwithstanding that the SIL is yet to be made and levied, the Council is presently undertaking infrastructure works that will be funded, at least in part, by the proposed SIL.

The issue – validity of a SIL as a special rate or charge

Both the LGAQ and the Council have serious reservations as to whether the SIL proposed for the PDAs can be validly made as a special rate or charge under chapter 3, part 6 of the *Economic Development Act 2012*.

The chapter 3, part 6 powers are very similar to the special rating and charging power which appeared as section 971 of the *Local Government Act 1993*. The Court of Appeal forensically examined this section in the case of **Australand Land and Housing No 5 (Hope Island) Pty Ltd Ors v Gold Coast City Council [2008] 1 Qd R 1** ("the Hope Island decision").

Relevantly, for the purposes of this submission, the decision is authority for the following propositions: -

- where the works to be funded by the levy are divisible into discrete, albeit complementary components, a separate special rate or charge for each discrete component should be levied;
- aggregating the costs and endeavouring to recover them under a single special rate or charge will be unlawful; and
- the levying authority must identify carefully every parcel of land that benefits from each discrete project component, and characterise the benefit/s each parcel obtains, to ensure that, if differing special benefits are identified among different parcels, each parcel is charged for the benefits it will enjoy and is not charged for the benefits it will not enjoy.

Further, the decision of McMurdo J in ***Whiting v Somerset Regional Council*** **[2010] QSC 20** ("the Whiting decision") is authority for the proposition that the overall plan for the special rate or charge (required by section 115(6) of the *Economic Development Act 2012*) must be adopted by MEDQ before the commencement of any of the works to be funded by the SIL.

Having regard to the particulars of the proposed SIL (as detailed above), the Court decisions cited above and the requirements of section 115 of the *Economic Development Act 2012,* it is the view of the LGAQ and the Council that the SIL, presently proposed to be levied as a special rate or charge, may be declared invalid, if ever subjected to legal challenge, on the following grounds: -

1. MEDQ will not be able to demonstrate that the PDAs will specially benefit from the provision of the infrastructure, or that the land (or its occupier) will specially contribute to the need for the infrastructure to be funded by the SILs. In particular, the infrastructure for which MEDQ proposes to levy the special rate or charge is, by its very nature, large-scale trunk infrastructure that services land other than the PDAs. In order for a special rate or charge to be validly levied, MEDQ would need to demonstrate that all of the land deriving a special benefit from the work is included in the levied area (see the discussion of the Hope Island decision above). In the LGAQ and Council's view, the works to be funded by the SIL will benefit future development land (beyond the PDAs), as well as existing land in the vicinity of the PDAs. In particular, it is noted that the special rate or charge will fund the cost of upgrading roads and sewerage and wastewater treatment facilities. It is clear that this infrastructure benefits a much wider area than that within the PDAs.

2. The flat rate SIL for residential lots in both Greater Flagstone and Yarrabilba results in a breach of the third proposition from the Hope Island decision (discussed above) in that lots within the Greater Flagstone PDA will be charged for the cost of benefits being provided to lots within the Yarrabilba PDA.

3. Contrary to the Whiting decision, no overall plan exists, as required by section 115(6) of the *Economic Development Act 2012*, notwithstanding that the Council is already undertaking infrastructure works intended to be funded by the SIL.

4. The *Economic Development Act 2012* makes no provision for the handing over of the special rating or charging power to local government, in the event that the PDAs are subsequently revoked.

The solution

It is submitted that the use of the special rates and charges power found in chapter 3, part 6 of the *Economic Development Act 2012* is a wholly inappropriate mechanism to achieve the outcome sought. The risks of legal challenge to special rating and charging decisions are real (as evidenced by the Court of Appeal and Supreme Court decisions discussed above), particularly where those decisions involve the

rating authority forming an opinion and/or exercising a discretion (i.e. section 115 of the *Economic Development Act 2012*).

It is submitted that an alternative legislative approach is required which removes the risks discussed in the previous paragraph, and avoids the complexities associated with trying to levy a special rate or charge. Specifically, it is submitted that additional sections be inserted into the *Economic Development Act 2012*, along the lines of those detailed in the **attached** draft.

These proposed sections are largely based on existing legislative precedent for the levying and collection of urban fire levies – generally see sections 105 to 114 of the *Fire and Rescue Service Act 1990*; and the *Economic Development Act 2012* itself – proposed sections 117H and 117I are based on sections 116 and 117 of the *Economic Development Act 2012*. The key features of these additional sections are as follows: -

1. A liability to pay the SIL continues, notwithstanding that the applicable PDA may be amended or revoked – see proposed section 43A;

2. The land to be burdened with the SIL is clearly defined, without the need for any entity to establish special benefit or special need – see proposed sections 117A and 117E(1);

3. The amount of the SIL is determined by regulation– see proposed section 117C;

4. The regulation can accommodate the circumstance of a lot owner paying the 30 year contribution "up-front" – see example 2 to proposed section 117C(3);

5. The quantum of the SIL is to be first agreed upon between MEDQ and the relevant Council or, if agreement cannot be reached, as assessed by an independent mediator – see proposed section 117C(4), (5), (6) and (7);

6. The relevant Council levies the SIL – see proposed section 117E(2);

7. A limited right of appeal (to MEDQ) against the levying of the SIL is available – see proposed section 117F;

8. The SIL can be levied by the Council as part of a rates notice or as a separate notice – see section 117G;

9. The SIL collected must be used by the relevant Council for the purpose of providing infrastructure to the PDA – see section 117H; and

10. An unpaid SIL can be recovered in the same way that overdue rates and charges can be recovered – see section 117I

Concluding comments

The LGAQ looks forward to a favourable consideration of the foregoing submission as soon as possible. The LGAQ (and the Logan City Council) would also welcome the opportunity to further discuss the matters raised in this submission at a mutually convenient time.

43A Continuing effect of ch 3, pt 6A

(1) This section applies if land ceases to be in a priority development area and, immediately before the cessation, a regulation under section 117C applied to the priority development area.

(2) Despite the land ceasing to be in a priority development area, chapter 3, part 6A continues to apply in respect of the land as if the land continued to be in a priority development area.

Part 6A Special infrastructure levy

Division 1 Interpretation

117A Definitions

(1) In this part—

component local government means a local government whose area, or part of whose area, comprises a priority development area or part of a priority development area.

prescribed property means real property, whether or not occupied by any person, that is within a priority development area and that is—

(a) a parcel of land separately held by an owner except a parcel to which paragraph (b) applies; or

(b) a portion of a parcel of land separately held by an owner, where the component local government for the local government area in which the portion is situated determines that the portion should be classed as a separate parcel for the purposes of this part; or

(c) a lot within the meaning of the *Building Units and Group Titles Act 1980*;

the term does not include—

(d) property that is owned or held by a local government unless the property is leased by the local government to someone other than another local government;

(e) property that is owned or occupied by the State or a government entity, unless the property is leased to the State or a government entity by someone who is not the State or a government entity; or

(f) property belonging to a class of property prescribed under a regulation not to be prescribed property.

(2) To avoid doubt, it is declared that, for the definition *prescribed property*, paragraph (a)—

parcel of land includes a lot under the *Land Title Act 1994* that is also a lot included in a community titles scheme under the *Body Corporate and Community Management Act 1997*.

Division 2 Funding of infrastructure

117B Liability to contribute

For each financial year the owners of prescribed properties must contribute in accordance with this part to the cost of providing infrastructure for a priority development area.

117C Annual contributions of owners of prescribed properties

(1) A regulation may prescribe the amounts of the contributions to be paid by owners of prescribed properties for a financial year.

(2) A regulation under subsection (1) shall prescribe the amounts of the contributions by categorising prescribed properties and prescribing differing amounts of contributions in accordance with those categories.

(3) Categorisation of prescribed properties is to be on the bases stated in the regulation.

Examples of the bases on which prescribed properties may be categorised—

1 the purposes for which properties are used

2 whether the total 30 year annual contribution for the properties has been paid

(4) Before a regulation is made under this section, the MEDQ must—

(a) give the relevant component local government the proposed categories of prescribed properties and proposed amounts of the contributions in accordance with those categories (the ***proposed categories and amounts of the contributions***);

(b) invite it to, within 20 business days after it is given the proposed categories and amounts of the contributions, make submissions to the MEDQ about them;

(c) consider any submissions made under paragraph (b) and, if it does not agree with those submissions, negotiate in good faith in an endeavour to reach agreement with the relevant component local government about the proposed categories and amounts of the contributions; and

(d) if the MEDQ and the relevant component local government are unable to reach agreement about the proposed categories and amounts of the contributions within 20 business days after the relevant component local government makes its submissions under subsection (4)(b), refer the dispute to a mediator—

(i) agreed between the MEDQ and the relevant component local government; or

(ii) if the parties cannot agree—appointed for them by The Institute of Arbitrators & Mediators Australia Limited ACN 008 520 045.

(5) A person cannot be appointed under subsection (4)(d)(ii) if—

(a) the person has a direct or indirect interest in the dispute; and

(b) the interest could conflict with the appropriate performance of a mediator's functions concerning the dispute.

(6) The process for the mediation is to be:

(a) the process agreed by the MEDQ and the relevant component local government; or

(b) the process determined by the mediator if the MEDQ and the relevant component local government do not agree on the process for the mediation.

(7) The mediator and the parties to the mediation must, in conducting the mediation, make all reasonable endeavours to ensure the mediation ends within 20 business days after the dispute is referred to the mediator under subsection (4)(d).

(8) As soon as practicable after a regulation is made under this section, the MEDQ must give notice in writing to each component local government of the amounts of contributions payable by owners of prescribed properties in respect of the financial year to which the regulation relates.

117D Duties of owner of prescribed property and component local government

(1) An owner of prescribed property for which an annual contribution is payable must, in accordance with this part, pay to the component local

government in whose area the prescribed property is situated the annual contribution in respect of the prescribed property and any other amounts the local government is authorised to impose pursuant to this part.

(2) Subject to this part a component local government must collect those annual contributions and other amounts.

117E Determinations and notifications of contributions

(1) In respect of each financial year, a component local government as at the first day of the financial year—

(a) must determine the prescribed properties within its local government area; and

(b) must determine the annual contributions payable in respect of prescribed properties by reference to the categories prescribed under a regulation made under section 117C.

(2) After a component local government makes its determination for any financial year, it must give the owner of each prescribed property within its local government area for which an annual contribution is payable a special infrastructure levy notice stating—

(a) the annual contribution in respect of the prescribed property;

(b) the amounts of any arrears (including interest and other charges) of annual contribution in respect of the prescribed property.

117F Appeal against local government's determination

(1) An owner of property to whom a special infrastructure levy notice is given may appeal to the MEDQ on any of the following grounds and on no other grounds—

(a) that the property is not prescribed property;

(b) that an amount shown in the notice is incorrect because of typographical or similar error, mathematical error or because the component local government wrongly categorised the property in terms of a regulation made under section 117C;

(c) that, for the purpose of determining the contributions payable, the prescribed property should in the circumstances be taken to be within a category (prescribed under a regulation made under section 117C) other than that on which the component local government based its determination.

(2) A person wishing to appeal must lodge a notice to that effect with the MEDQ setting out the grounds of the appeal within 30 days after the special infrastructure levy notice is given.

(3) The MEDQ may require an appellant or the component local government concerned to provide information relevant to the determination of the appeal.

(4) The MEDQ may allow or reject an appeal.

(5) If the MEDQ allows an appeal, the relevant component local government must—

(a) amend the special infrastructure levy notice; or

(b) revoke the special infrastructure levy notice; or

(c) revoke the special infrastructure levy notice and give a new levy notice;

in accordance with the determination of the MEDQ.

(6) If the MEDQ allows an appeal, the relevant component local government must refund to the appellant any amount paid in respect of contributions, for the financial year to which the notice relates and for any previous financial year, in excess of the amount calculated in accordance with the MEDQ's determination.

(7) The determination of the MEDQ in respect of an appeal is final.

117G Manner of giving notification

(1) A special infrastructure levy notice may be given to the owner of prescribed property—

(a) as an item on a rate notice given to the owner in respect of that prescribed property; or

(b) as a separate notice given before 1 January of the financial year to which the notice relates.

(2) Where for any financial year a component local government gives to the owner of prescribed property in respect of that prescribed property 2 or more rate notices, each relating to part of that financial year, a special infrastructure levy notice is taken to be given to the owner in accordance with subsection (1)(a) if each rate notice contains an item for the payment in respect of that prescribed property of—

(a) such amount as bears to the total of the annual contribution for the financial year the same proportion as the period (in months) for which the rate notice is given bears to 12; and

(b) the amount of any arrears of annual contribution.

(3) Where notification is given as a separate notice, that notice is taken to be a rate notice under the *Local Government Act 2009* or, in the case of Brisbane City Council, the *City of Brisbane Act 2010*.

(4) A notification must not be given as an item on a rate notice unless—

(a) where only 1 rate notice is given for a financial year—that rate notice is given before 1 January of that financial year;

(b) where 2 or more rate notices are given for a financial year—the first of those notices is given before 1 January of that financial year.

117H Application of annual contribution

(1) An annual contribution collected by a component local government pursuant to this part must be used by the component local government for the purpose of providing infrastructure for the priority development area.

(2) However, the annual contribution need not be held in trust.

117I Recovery of annual contribution

(1) An annual contribution in respect of a prescribed property does not become owing until the expiration of the period for payment specified in a special infrastructure levy notice given to the owner of the prescribed property.

(2) If there is more than 1 owner of the prescribed property, all the owners are jointly and severally liable to pay the amount.

(3) If the amount becomes owing under subsection (1), the component local government may recover it from the owner as a debt.

(4) Also, the component local government may recover the amount from the owner for the time being of the prescribed property.

(5) If the component local government may recover the amount under this section, the local government overdue rates or charges provisions apply for the amount as if—

(a) the special infrastructure levy were a rate or charge under the *Local Government Act 2009* or the *City of Brisbane Act 2010* on the land to which the special rate or charge applies; and

(b) a reference in the provisions to overdue rates and charges were a reference to the amount.

(6) in this section—

local government overdue rates or charges provisions means—

(a) for prescribed property outside the City of Brisbane—the following provisions—

(i) the *Local Government Act 2009*, section 95;

(ii) each provision of a regulation made under the *Local Government Act 2009*, section 96; or

(b) for prescribed property in the City of Brisbane—the following provisions—

(i) the *City of Brisbane Act 2010*, section 97;

(ii) each provision of a regulation made under the *City of Brisbane Act 2010*, section 98.