

Your reference -
Our reference Ipswich City Council Submission 15 May 2014
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The Research Director
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15 May 2014

Dear Sir or Madam,

Re: Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014

Reference is made to the invitation to make a submission in relation to the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014 (the Bill). The content of this letter and Attachment A constitute the submission by Ipswich City Council.

The review of the Bill has been undertaken in a very compressed timeframe and without the benefit of having sight of the proposed content of the regulation and guidelines. Consequently, whilst the content of the submission is focussed on the Bill, it has not been possible to assess the full implications of the proposed legislation on Ipswich City Council and the Ipswich Local Government Area. It is hoped that the opportunity will be given to local government to review the draft regulation and guidelines to enable comment to be provided and to gain a better understanding of the implications of the proposed legislation for Ipswich City Council.

The review of the Bill has identified some key matters that Council considers need to be addressed and which are set out below. In addition, other issues that require further consideration have been identified in **Attachment A**.

Currently, Ipswich City Council charges the **lesser** of the pre-SPRP amount and the maximum adopted charge (section 648A (1)(b) of the *Sustainable Planning Act 2009*), with the average charge for the main growth areas within the City (excluding Springfield) being \$25,614 per lot. Because of the relationship between the Springfield Infrastructure Agreement and the Council's Planning Scheme Policy 5 – Infrastructure, in the Springfield Lakes area, for example, the average charge is only \$21,337 per lot.

The draft provisions (specifically section 979) have not acknowledged that some Councils (including Ipswich City Council) have not made an infrastructure charges resolution. Consequently, there are no saving provisions for those Councils that charge under the 'pre-SPRP amount' section contained in the *Sustainable Planning Act 2009*. If unchanged, this will have the effect that after the commencement of the amended Act (likely 1 July 2014), Ipswich City Council will no longer be able to charge the **lesser** of the maximum adopted charge and the charge pursuant to Planning Scheme Policy 5 - Infrastructure of the Ipswich Planning Scheme. In other words, Ipswich City Council would have no option except to charge the maximum adopted charge (\$28,000 per lot) across the City

pursuant to the current State Planning Regulatory Provisions (adopted charges) dated July 2012. This situation would also apply to all types of non-residential development.

Council assumes that this situation is only an unintended drafting omission because if left unchanged, and as noted above, it would increase infrastructure contributions in the main growth areas of the City somewhere in the order of \$2,386 - \$6,663 per lot.

To ensure that the pre-SPRP adopted infrastructure charging regime remains valid (similar to adopted infrastructure charges resolutions) it is suggested that a new section 979A, along the following lines, be inserted in the amending Act:-

979A pre-SPRP charges until July 2016

- (1) An adopted infrastructure charge of a local government as determined under section 648A(1)(b) of the unamended Act (an **existing pre-SPRP charge**) continues in effect, subject to this section.
- (2) An existing pre-SPRP charge is of no effect to the extent it is inconsistent with the SPRP (adopted charges).
- (3) If the methodology for determining an existing pre-SPRP charge does not include a method for working out the cost of infrastructure the subject of an offset or refund, the existing pre-SPRP charge methodology is taken to include a method as set out in a guideline-
 - (a) Made by the Minister; and
 - (b) Prescribed by regulation.

The explanatory notes outline that Section 631(1)(a) "confirms that an adopted charge is only valid if it is permitted according to the SPRP (adopted charges)". On the commencement of the amended Act the SPRP (adopted charges) dated July 2012 becomes the SPRP (adopted charges). There is some doubt as to whether the SPRP (adopted charges) dated July 2012 actually permits an adopted charge to be made – the head of power arguably residing in section 648A of the unamended Act. This doubt should be removed either by amending the current SPRP (adopted charges) or adopting a new regulation or by making it explicit in section 631(1) that the current SPSP (adopted charges) permits an adopted charge to be made. This suggested amendment would remove all doubt as to the ability for a Council to make a charges resolution after the coming into effect of the amended Act.

Yours faithfully



Nick Vass-Bowen
STRATEGIC PLANNING MANAGER

ATTACHMENT A

Section	Provision	Comment
Section 94A	<i>Requirement to review LGIP</i>	<p>Whilst requiring consultation with the Water Distributor-Retailer where a Council is a participating local government, it is noted that no purpose for the consultation is specified. Consideration should be given as to whether provisions need to be included in the legislation regarding the purpose of the consultation e.g. whether it is limited to matters which would have relevance to the Water Distributor-Retailer's NetServ Plan.</p>
<p>Clause 9 - Replacement of Section 478, Clause 12 - Replacement of Section 535, New Section 637 and New Section 657</p>	<p><i>Appeals about particular charges for infrastructure, Appeals about infrastructure charges decisions, Requirements for Infrastructure Charges Notices and Working out cost for required offset or refunds</i></p>	<p>Make reference to an appeal to Planning and Environment Court or to the Building and Development Committee being able to be made in relation to an error relating to an offset or refund in an ICN and operates in conjunction with the requirement that an ICN must include the details of an offset or refund (refer new section 637 <i>Requirements for Infrastructure Charges Notices</i>) and the new process for working out the cost for required offset or refunds.</p> <p>There is no clear definition of offset or refund and it is not clear whether, for the purpose of specifying the details of the offset or refund in the ICN that it is the 'planned cost' or the 'actual cost' is to be specified (although section 657 seems to indicate it is the 'planned cost' by referring to the establishment cost).</p> <p>In practice, the offset or refund amount often cannot be finally determined with certainty until design and construction costs have been established where the actual cost has to be taken into account, particularly where development is proposed in a greenfield area.</p> <p>Clarification is sought in relation to where an applicant requires the Council to use the methodology under the relevant infrastructure charges resolution to recalculate the establishment cost, whether this includes the need to establish the actual construction costs. If this is the case then provisions should be</p>

Section	Provision	Comment
		included in the Bill setting out any obligations on the applicant to provide information required to determine the actual cost.
Section 629	<i>State planning regulatory provision governing charges</i>	<p>Whilst it is recognised that the proposed legislation enables indexation, it doesn't appear to allow indexation of charges levied by a Council operating under the 'pre-SPRP amount' provisions contained in Section 648A(1)(b) of the SPA as is the case with indexation of the maximum adopted charge amount or charges levies under an infrastructure charges resolution.</p> <p>This does not appear to be equitable or consistent, particularly given that in the case of Ipswich City Council using the 'pre-SPRP amount' provisions it effectively is using charges that on average are below the maximum charges and provide for continuity of operation of existing Infrastructure Agreements entered into with developers (including maintaining offset values).</p> <p>Should provision be made in the legislation for the continuation of charging under the 'pre-SPRP amount' provisions, it is requested that the Bill include provisions to allow the indexation of charges levied under the saved 'pre-SPRP amount' provisions.</p>
Sections 647, 650, 651 and 652	<i>Necessary infrastructure condition for other infrastructure and Conditions for additional trunk infrastructure costs</i>	<p>Proposed Section 647 appears to potentially limit the imposition of a condition requiring trunk infrastructure necessary to service the premises to development completely within the PIA unless it is the intent (not wholly clear in the Bill) that Section 650, 651 and 652 provide the necessary head of power to deal with this matter where development is completely or partly outside the PIA.</p> <p>Ipswich City Council's Priority Infrastructure Plan is based on planning for ultimate development i.e. includes trunk infrastructure outside the PIA. Clarification is sought that the provisions in the Bill allow for the imposition of equivalent conditions as far as are necessary under section 647 in circumstances where the PIP (LGIP) is</p>

Section	Provision	Comment
		based on ultimate development and includes areas outside the PIA.
Sections 657	<i>Process</i>	The word 'must' in clauses (3) and (4) appears to be premised on the ICN requiring amendment following the request, which may not always be the case. Consideration should be given to amending the provision to be clear that clauses (3) and (4) apply where required following determination under clause (2).
Section 660	<i>Deciding conversion application</i>	The 30 business day 'required period' to decide whether infrastructure is converted to trunk infrastructure may be overly short. It may be the case that a Council resolution would be required to approve any such conversions and this timeframe is not likely to work with meeting cycles. Additionally, the assessment of such a request may require quite detailed consideration against wider network elements and their operation (it is not clear whether this is the case as the criteria to be applied will be set out in regulations yet to be seen), particularly in greenfield areas. Consideration needs to be given to specifying a longer timeframe if a wider network analysis is required to be undertaken.