

PLEASE QUOTE:

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ENQUIRIES TO: Aletta Nugent - Manager Strategic Planning



15 May 2014

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

By email: sdiic@parliament.qld.gov.au

Dear Sir/Madam

Submission - Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014

I refer to the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014 (**Bill**) that was introduced by the Deputy Premier and Minister for State Development, Infrastructure and Planning, Hon Jeff Seeney MP to the Queensland Parliament on 8 May 2014. Council would like to make the following submission in relation to the Bill.

Clause 7 Amendment of s335 (Content of decision notice)

With regards to the proposed inclusion of a new section 335(1)(e)(iii), it would create an unnecessary administrative burden for the assessment manager to itemise, for each condition about infrastructure, the provision under which the condition was imposed.

Councils are able to ensure that they impose conditions that are lawful and applicants are able to investigate if they feel a condition is not lawful, without the need to notate the provision under which the condition was imposed. This requirement will add to the time it takes to prepare a decision notice, and the complexity of decision notices.

Therefore it is submitted that this new requirement to itemise, for each condition about infrastructure, the provision under which the condition was imposed, should not be introduced into section 335 of the *Sustainable Planning Act (Act)*.

Clause 8 Amendment of s347 (Conditions that can not be imposed)

The proposed inclusion of section 347(1)(f) into the Act will mean that a development approval cannot be conditioned to require the applicant to enter into an infrastructure agreement. The alternative to imposing such a condition would be to require the applicant to construct certain works which service a broader area

than just the development site. Imposing a condition requiring infrastructure to be constructed that services a broader area than the development site has the potential to be struck out by the Court on the basis that it is not reasonable or relevant.

Therefore, in the absence of being able to impose a condition requiring an applicant to enter into an infrastructure agreement, the development application will have to be refused.

Clause 18 Replacement of ch 8 (Infrastructure)

Proposed section 626 - Extension of chapter to permissible changes and compliance assessment

Section 626 is poorly drafted and difficult to navigate. It is submitted that this proposed section be reworded so that it is easier to interpret.

Section 672 Definitions for ch 8

Establishment cost

The definition of establishment cost should be amended to include the financing costs for the infrastructure. For existing infrastructure, it should be amended to include the residual financing cost of the infrastructure.

For the existing infrastructure element of this definition, the cost of that infrastructure is determined by reference to the value of it as reflected in Council's asset register. We submit that the cost of existing infrastructure should be determined based on the cost of reconstructing the same works using contemporary materials, techniques and technologies.

Relevant or reasonable requirements

The definition for *relevant or reasonable requirements* states that "***relevant or reasonable requirements*** means sections 345 and 406".

This should be reworded to state "***relevant or reasonable requirements*** see sections 345 and 406".

Section 628 References in ch 8

Section 628 is poorly drafted and difficult to navigate. It is submitted that this proposed section be reworded so that it is easier to interpret.

Also, the term "charge matter" should be changed to "infrastructure charge" or another phrase that better describes the adopted charge, infrastructure charges notice or levied charge that it is intended to apply to.

Section 633 Working out cost of infrastructure for offset or refund

Council disagrees with the requirement for the charges resolution to include a method for working out the cost of infrastructure the subject of the offset or refund.

It is submitted that the decision whether or not to provide an offset or refund should be made by Council on a case by case basis. How infrastructure is costed for the purposes of an offset or refund should also be a decision for Council based on the specific circumstances of a development and the relevant infrastructure.

The State government should not seek to regulate what should be a decision for Council to make in its discretion, and in the best interests of its local government area.

There is no detail as to the methodology that must be applied by local governments for determining the cost of infrastructure for the purposes of this section and a charges resolution. This is a concern, because if it is based on the actual cost of the infrastructure, then in combination with proposed section 657, an applicant can elect to use the establishment cost of infrastructure or the actual cost of infrastructure to calculate an offset or refund, depending on what will provide the maximum refund. This should not be allowed. There should be one method for calculating infrastructure costs for the purposes of offsets and refunds.

Section 635 When charge may be levied and recovered

It is recommended that section 635(2) and section 635(6)(b) be amended to remove reference to the charges being payable by the applicant, as the applicant could change over time. The infrastructure charges should instead be payable for the development. This links to proposed section 664 under which the infrastructure charges levied are taken to be rates. Rates are payable by the land owner, who will not necessarily be the applicant for the development approval.

Regarding proposed section 635(3)(a)(i), the requirement for the notice to be given "as soon as practicable" is vague and creates uncertainty.

Section 636 Limitation of levied charge

This is a matter that should be left to the discretion of Councils. There no need for the application of existing entitlements to infrastructure charges payable to be regulated in this way.

Further, we have concerns with the requirement to deduct from any infrastructure charges payable the demand from development that may be lawfully carried out on the premises without the need for a further development permit. This means that demand generated by development that has been approved but not acted on must be deducted from the infrastructure charges levied for a later development. It is assumed that the basis for this requirement is the assumption that the relevant infrastructure charges will be paid for that development. However, if the earlier approved development never proceeds, but the later development does, then the infrastructure charges deducted due to the demand generated by that earlier development will never be recouped.

Section 637 Requirements for infrastructure charges notice

The requirement, in section 637(2), for an infrastructure charges notice to include an information notice about the decision to give the notice, is an unnecessary burden on assessment managers. The amount of infrastructure charges levied and set out in the infrastructure charges notice is calculated in accordance with the adopted infrastructure charges notice. Transparency for the amounts levied is provided by the adopted infrastructure charges notice. There is no need to support this with an information notice.

This requirement, and others like it (such as that contained in the proposed new section 335(1)(e)(iii)) appear to assume that assessment managers cannot be trusted and need to have all of their actions in relation to infrastructure charging and conditioning heavily, and arguably over, regulated. It is disappointing that the Bill appears to have been drafted based on this position.

Overall, this requirement will increase the regulatory burden on assessment managers and increase the complexity of the documentation issued as part of a development approval.

Section 638 Payment triggers generally

The trigger for payment in proposed section 638(1)(c) for a material change of use is ambiguous. Rather than the trigger being "when the change happens", it should be "when the use commences".

Part 2, Division 1, Subdivision 5 Changing charges during relevant appeal period

The process for seeking a review of an infrastructure charges notice set out in proposed Subdivision 5 is unnecessarily complicated. There is no need for this process to be as detailed as the process for seeking a negotiated decision notice.

Council does not necessarily disagree with there being some avenue for seeking the review of an infrastructure charges notice, as an alternative to lodging an appeal. However, the process for doing so can be simplified from that currently proposed in Subdivision 5.

Section 648 Deemed compliance with necessary or reasonable requirements

Section 648(1)(a)(ii) states that a necessary infrastructure condition is taken to comply with the relevant or reasonable requirements if the infrastructure required is "the most efficient and cost-effective solution for servicing other premises". This phrase is ambiguous and leaves conditions imposed under section 646 and 647 open to potential frequent legal challenge.

Section 649 Offset or refund requirements

As stated previously, Council disagrees with the introduction of mandatory offset and refund requirements, as the decision whether or not to provide an offset or refund should be made by Council on a case by case basis.

We object to the requirement in section 649(2) that the cost of infrastructure provided under a condition be offset against any adopted charge that has been levied. Any offset should be granted in relation to charges levied for that infrastructure network. The way section 649(2) is currently drafted, the cost of constructing a road would be offset against charges levied for water, sewerage and other infrastructure networks, not just the transport network infrastructure charge. This is considered inequitable and has the potential to impact on Councils' ability to finance works on its infrastructure networks, if all the contributions made by an applicant as part of a development is being directed to a single infrastructure item.

Regarding section 649(3), this will result in the refusal of development applications. Council will need to be very cautious when approving an application that it does not require additional infrastructure and if it does, the cost of constructing this will not

exceed any infrastructure charges that are levied. Council cannot afford to potentially open itself up to an undetermined financial liability that has not been budgeted for. Therefore, development that cannot be serviced by existing infrastructure networks will be refused.

In a region like the Cassowary Coast, with its aging and limited infrastructure networks, Council's financial constraints mean that if these refund provisions are introduced, it will need to seriously consider refusing development that would otherwise be approved, subject to conditions, on the basis that it is inconsistent with Council's Priority Infrastructure Plan. To do otherwise would leave Council open to paying refunds for works it cannot afford.

It is submitted that "premises" is not the appropriate word to be used in section 649(3)(b)(i) to achieve what appears to be the purpose of this section. It is suggested that the word "infrastructure" or "infrastructure network" be used instead.

Regarding section 649(4), this provision is ambiguous. Its purpose is clarified by proposed section 670. However, if the intention of section 649(4) is that an infrastructure agreement can be entered into establishing the timing of the refund, then this section should just say that.

Section 650 Power to impose

Why is an assessment manager unable to impose a condition requiring the carrying out of works instead of requiring payment? We note that the applicant can elect to construct the works instead of making the payment in accordance with proposed section 651. Why is the assessment manager unable to determine that the works being carried out is the preferred way of ensuring the infrastructure is provided?

Section 651 Content of additional payment condition

Section 651 adds additional and unnecessary regulatory burden on assessment managers in imposing infrastructure conditions. This section makes imposing conditions that ensure adequate infrastructure is provided for a development overly complicated. Assessment managers should have the flexibility to draft a condition ensuring a development is provided with adequate infrastructure that is suitable based on the specific circumstances of the development.

Regarding section 651(2)(a), it is unclear what type of development this applies to, given the contents of section 651(2)(b) to (d).

Section 653 Other area restrictions

Why is the limitation "necessary to service the rest of the area" contained in section 653(2)(a)(ii)? What if the additional payment condition is only required for infrastructure that extends to service the development site?

Section 654 Refund if development in PIA

The introduction of this refund requirement may result in the refusal of development applications. Without the ability to require an infrastructure agreement, Council will be very cautious about approving an application that requires an additional payment condition and is inside the PIA, to ensure that it does not become liable to fund the construction of infrastructure that was not planned and budgeted for.

We note that section 654(3) is intended to allow an infrastructure agreement to be entered into in this circumstance, however Council cannot require this as a condition of approval.

Regarding section 654(3), the meaning of this section is ambiguous. Its purpose is clarified by proposed section 670. However, if the intention of section 654(3) is that an infrastructure agreement can be entered into establishing the timing of the refund, then this section should just say that.

Section 655 Refund if development approval ceases

Regarding section 655(3), this provision is ambiguous. Its purpose is clarified by proposed section 670. However, if the intention of section 655(3) is that an infrastructure agreement can be entered into establishing the timing of the refund, then this section should just say that.

Section 655 Refund if development approval ceases

Regarding section 655(3), this provision is ambiguous. Its purpose is clarified by proposed section 670. However, if the intention of section 655(3) is that an infrastructure agreement can be entered into establishing the timing of the refund, then this section should just say that.

Section 657 Process

It is unclear at this stage what methodology must be utilised in a charges resolution to determine the cost of infrastructure. However, if it means that the actual cost of infrastructure is used, then this section gives an applicant the ability to use either the establishment cost or the actual cost for the purposes of obtaining an offset or refund, depending on what costing methodology is most beneficial for the applicant. This is an inequitable outcome. There should be one method for calculating infrastructure costs for the purposes of offsets and refunds.

Part 2, Division 3, Subdivision 1 Conversion of particular non-trunk infrastructure before construction starts

This Subdivision merely serves to allow an applicant to obtain a refund or offset by having non-trunk infrastructure it is required to construct considered trunk infrastructure.

The Subdivision adds complexity to the proposed infrastructure conditioning regime. It contains no detail as to when non-trunk infrastructure will be considered to be trunk infrastructure. It also opens up the decision of a Council not to approve the conversion of trunk infrastructure to non-trunk infrastructure to legal challenge.

Given that the sole purpose of this Subdivision appears to be a mechanism for applicants to minimise the amount they contribute towards infrastructure required to service their development, while passing the burden for funding that infrastructure onto local government, we strongly object to this inclusion of this Subdivision.

Section 661 Notice of decision

Regarding proposed section 661(1), the requirement for the notice to be given "as soon as practicable" is vague and creates uncertainty.

Section 669 Reimbursement by local government for replacement infrastructure

Regarding section 669(2), this provision is ambiguous. Its purpose is clarified by proposed section 670. However, if the intention of section 669(2) is that an infrastructure agreement can be entered into establishing the timing of the refund, then this section should just say that.

Section 670 Infrastructure agreement

As discussed above, the provisions referred to in this section are ambiguous. Their purpose would be clarified if it was made clear in the sections themselves that they refer to an infrastructure agreement being entered into under this part.

Section 671 Obligation to negotiate in good faith

This section adds complexity to the infrastructure charging and conditioning regime proposed. It is an unnecessary regulatory burden and is likely to be difficult to enforce.

Section 672 Content of infrastructure agreement

This section should be amended to clarify that an infrastructure agreement can deal with matters other than those listed in section 672(1).

Section 677 Agreement for infrastructure partnerships

Does this section override the restriction in proposed section 347(1)(f) on imposing a condition on a development approval requiring an infrastructure agreement?

Section 679 Trunk infrastructure not identified

The purpose of this section is unclear. It should be amended to clarify its intention or removed.

Section 987 Infrastructure agreements

Section 987(2) should be amended to clarify that the provisions of the amended act do not invalidate any aspect of an existing infrastructure agreement.

General

The timeframe within which submissions were able to be made on this Bill was completely inadequate. Not enough time was provided to allow for a comprehensive and complete review of the Bill across Council. Council submits that full and proper comprehensive consultation should be carried out on the Bill, to ensure its provisions are workable and do not have unintended consequences.

If you require any further information in relation to this matter, please contact Council's Manager Strategic Planning Ms Aletta Nugent on Ph: (07) 4030 2265.

Yours faithfully



JOHN PETTIGREW
DIRECTOR PLANNING & ENVIRONMENTAL SERVICES