

Table 1:

Issue	Section within SP(IC)OLA Bill 2014	Concern
<p>Indexation of maximum adopted charge</p>	<p>Section 629</p>	<p>(1) Despite subsection 629(2) referring to a <i>change</i> to the maximum adopted charge, subsection 629(3) only provides a method for <i>increasing</i> the maximum. The method should allow for both increases and decreases in the PPI index to be reflected in the maximum. TRC recommends that each instance of the word “increase” in s629(3) should be replaced with the word “change”.</p> <p>(2) Subsection 629(3) refers to an increase in the maximum being not more than the increase in the 3 yearly PPI index average.</p> <p>It would be more appropriate to index the maximum adopted charge in accordance with actual movements in the producer price index since the maximum was last changed in the SPRP.</p> <p>This is because the maximum charge is intended to reflect the cost of providing infrastructure as at the date the charge is adopted. A 3 year rolling average is only appropriate when forecasting (escalating) future infrastructure costs in the calculation of the NPV of the establishment cost.</p> <p>TRC therefore recommends that the maximum charge be adjusted in accordance with historical movements in the PPI since it was last changed in the SPRP.</p>
	<p>Section 631</p>	<p>Subsection 631(5)(b) refers to an automatic increase in levied charges being not more than the increase for the PPI for the period starting the day the charge is levied and ending on the day it is paid, adjusted by reference to the 3 yearly PPI index average.</p> <p>TRC recommends that section 631(5)(b) be amended to refer to an automatic increase in the levied charge not being more than the historical increase in the producer price index starting on the day the charge is levied and ending on the day it is paid.</p>
<p>Credit for existing demand</p>	<p>S636</p>	<p>Section 636 replaces the concept of credits (currently referred to as discounts in an adopted infrastructure charges resolution made pursuant to the SPA).</p> <p>Section 636 states that in working out the additional demand (which can be charged for), the following relating to the premises cannot be included:</p> <ul style="list-style-type: none"> (a) existing lawful uses already taking place on the premises (b) other development that may be lawfully carried out on the premises without the need for a further development permit. <p>It is understood that (b) would include development which could be carried</p>

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		<p>out under an existing live development permit, or development which is self assessable and therefore does not require a development permit.</p> <p>The new method:</p> <ul style="list-style-type: none"> (i) assumes that all existing lawful uses have access to all networks. This is not always the case, with many existing lawful uses not being serviced by reticulated water or sewerage. In such cases TRC should be able to charge for the demand of the existing lawful use (or other development) for those networks which are not provided. (ii) could require TRC to provide a credit for a previous development approval which although not actioned or having paid infrastructure charges, remains 'live.' This could result in the subsequent development approval not having to pay infrastructure charges. (iii) does not provide a means of considering the value of previous infrastructure contributions (in the form of land or works) made for a site where criteria (a) and (b) do not apply. (iv) uses terminology that is much less clear and much more difficult to explain than the concept of a credit.
<p>Offsets or refunds</p>	<p>Various</p>	<p>The Bill proposes a new process for working out the establishment cost of trunk infrastructure which has been conditioned for, and which is to be subject to an offset or refund.</p> <p>In the first instance, section 637(1) will require a local government to state on an infrastructure charges notice (ICN) whether an offset or refund applies, and if so, details of the offset or refund.</p> <p>It is understood from section 478 and section 657(1)(a)(ii) of the Bill as well as the Explanatory Notes (see particularly for s657) that the details of an offset or refund stated on an ICN must include the establishment cost of the trunk infrastructure being conditioned for which is stated in the LGIP.</p> <p>The establishment cost stated on the ICN will form the basis for the offset or refund, unless the applicant does not agree with the value of the establishment cost stated in the ICN and requests the local government to use the method stated in the infrastructure charges resolution (ICR) to recalculate the establishment cost pursuant to s657.</p> <p>TRC submits that there are a number of problems with the proposed approach for offsets or refunds. These are as follows:</p> <ol style="list-style-type: none"> 1. The establishment cost stated in the LGIP is a preliminary estimate and hence likely to be inaccurate. If Council has over or understated the

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		<p>establishment cost in its LGIP, it does not get an opportunity to revise this estimate to more accurately reflect the market cost/value at the time of giving an offset or refund. It must use the establishment cost found in the LGIP and state this in the ICN. On the other hand, the developer is allowed to have the establishment cost subsequently recalculated using a methodology stated in the ICR to get a more accurate market cost/value. This approach financially disadvantages a local government because a developer will only ever challenge an establishment cost which has been understated in the LGIP. Where an establishment cost in an LGIP has been overstated, the developer would accept the cost and take the windfall. This is not consistent with supporting local government sustainability.</p> <p>2. It is not clear how the establishment cost of trunk infrastructure which has been conditioned for but which is not included in the LGIP would be stated in the ICN. The Bill does not indicate how a local government would work out the establishment cost if it is not included in the LGIP. This situation could arise under section 647, section 646(2)(b) - different trunk infrastructure, and where non trunk infrastructure has been converted to trunk under section 658 to section 662.</p> <p>3. It is not clear how the establishment cost would be worked out if a developer is only conditioned to provide a portion of a trunk item identified in the LGIP. It would be inappropriate to use the establishment cost stated in the LGIP, as this would be clearly excessive, however the Bill provides no clear alternative methodology.</p> <p>To alleviate these concerns, TRC recommends that the Bill be amended to allow a local government to recalculate the establishment cost in accordance with the methodology stated in its ICR prior to stating the establishment cost on the ICN.</p>
<p>Refunds for necessary trunk infrastructure</p>	<p>S649(3)(b)</p>	<p>Where a local government provides a refund to an applicant for the supply of necessary trunk infrastructure, the local government is required to refund the proportion of the establishment cost of the trunk infrastructure that may be apportioned reasonably to other users of premises other than the subject premises and has been or is to be the subject of a levied charge.</p> <p>As this section applies to necessary trunk infrastructure which will generally have been identified in the LGIP and is to be funded by the local government, it is unnecessary to require a local government to undertake the complex calculations stated in this section to determine a refund.</p> <p>It is recommended that (a) and (b) be deleted from this section and be replaced with the following words:</p> <p>“The local government must refund the applicant the difference between the cost of the infrastructure and the levied charge.”</p>

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Payment time for additional payment condition	S651(2)	<p>The existing SPA makes it clear that if a development has been conditioned to pay additional trunk infrastructure costs, the timing of the payment is contingent on whether the infrastructure is necessary to service the premises. Where it is necessary, payment must be made before development commences. This ensures that local government is not required to expend money on additional trunk infrastructure costs in advance of receiving payment for those costs and supports local government financial sustainability.</p> <p>The re-drafting of this section detracts from this principle as the payment times stated in 2(b), 2(c) or 2(d) are now seen as equal alternatives to 2(a). This is incorrect. TRC recommends that the wording from the existing SPA be used.</p>
Trunk infrastructure not identified	S679	<p>This section purports to apply where the definition of trunk infrastructure under section 627 does not apply and includes where a local government does not have a LGIP.</p> <p>The implication of this section is that non-trunk infrastructure is development infrastructure for any of the purposes stated in section 665(2) and development infrastructure for any other purpose is taken to be trunk infrastructure.</p> <p>TRC is concerned with the application of this section given the unclear and ambiguous nature of its drafting. For example, would it apply outside the PIA where the local government has not identified trunk infrastructure?</p> <p>This section does not appear to work with the other provisions of Chapter 8 and TRC recommends that it be removed. Section 647 already applies where an LGIP does not identify adequate trunk infrastructure in its LGIP and section 659 allows an applicant to apply to convert non-trunk infrastructure to trunk infrastructure. At the very least, TRC recommends that the drafting of section 679(1) be amended to state that the section only applies if the local government does not have a LGIP (or until 1 July 2016, an ICR that identifies trunk infrastructure).</p>