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Attention: Mr Bruce Young MP

Dear Sir

SUBMISSION ON THE SUSTAINABLE PLANNING (INFRASTRUCTURE CHARGES) & OTHER LEGISLATION AMENDMENT BILL 2014

As a key local government in the south east Queensland growth corridor providing solutions to a growing regional population and housing shortage, Logan City Council is pleased to make a submission on the *Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014* (the Bill) to the State Development, Infrastructure and Industry Parliamentary Committee.

Logan City Council is supportive of the Queensland Government's intent to provide certainty and equity in reforming the infrastructure charges framework. Changes such as the simplified resolution process and the clarification of 'permissible change' provisions are both useful and encourage efficiency.

However, there are a number of key matters that Logan City Council seeks to bring to your attention that will result in a less efficient and longer development assessment process, greater uncertainty for both the development industry and local government, and potential for significant financial impacts on local governments and their communities.

The most significant of these matters relates to the proposed application process to convert non-trunk infrastructure to trunk infrastructure, along with offset and refund requirements. Further concern relates to the continuation of the inequitable position of local governments unable to apply indexation to the capped charges set under the State Planning Regulatory Provision (SPRP).

Logan City Council urges the Parliamentary Committee to consider this submission in its review of the Bill and to particularly give appropriate consideration to the potential financial impacts and long-term implications this may have on the financial sustainability of local governments.

Please note that given the time available to make a submission to the Parliamentary Committee, this submission represents the views of Council officers and is yet to be considered by Council. A Council-endorsed submission will be provided once available.

If you would like any further information or clarification regarding this matter please do not hesitate contact me by telephone on (07) 3412 4378 or AnthonyJones@logan.qld.gov.au

Yours faithfully



Anthony Jones
Manager, Growth Management & Urban Design
(on behalf of Chris Rose, Chief Executive Officer)

Att:



LOGAN CITY COUNCIL SUBMISSION

MAY 2014

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

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DISCUSSION

The infrastructure planning and charging framework within Queensland has been the subject of much debate in Queensland. The introduction of Priority Infrastructure Plans (PIP) coincided with the downturn in the property development industry, resulting in an increasing pressure to decrease infrastructure charges to improve project financial viability.

Despite significant research recognising infrastructure charges as an important policy lever to encourage the economically efficient provision of infrastructure and serviced land in an equitable manner, the current and proposed capped framework does not provide this.

The 2009 Australian Future Tax System (Henry Tax Review) and the 2011 Productivity Commission Performance Benchmarking of Australian Business Regulation: Planning Zoning and Development Assessments both strongly support the principles of appropriately pricing the provision of infrastructure and charging developments in accordance with the incremental costs associated with each development. This pricing mechanism encourages efficiency in infrastructure provision and can accommodate 'out of sequence' development where the developer identifies the additional cost can be supported by the market demand of the product.

This submission has been prepared to inform the State Development, Infrastructure and Industry Parliamentary Committee of a number of concerns with the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014 (the Bill) and to identify opportunities to strike a better balance between the development industry, local ratepayers and local government.

The submission is premised on the overarching concern that the current and proposed capped infrastructure charges framework is shifting more of the costs of infrastructure that supports new development from the developer to existing ratepayers. It is in the interest of Logan communities that Council has the ability to efficiently and cost effectively deliver this infrastructure, without unfairly financially impacting on them.

s631 Contents - General

There is no ability for local governments to escalate the capped charges under the State Regulatory Planning Provision (SRPP) in accordance with an appropriate indexation method. This is at the discretion of the Minister.

Issue – Capped charges were introduced on 1 July 2011, with the Minister able to apply indexation to the maximum charges to reflect the increased cost of providing infrastructure as a result of inflation. To date no indexation has been applied, and the proposed legislation continues to restrict local governments from indexing charges. Since implementation, charges have dropped in value by about 8% in real terms (2011-2013), whilst the State Government typically charges a 3.5% annual indexation to its own fees and charges.

Risk – The funding gap between the cost of infrastructure and revenue from infrastructure charges is continuing to widen, contributing to future financial sustainability challenges for local governments. This has been offset by shifting a greater proportion of the burden of infrastructure funding to ratepayers (through higher rates).

Opportunity – Amend the Bill to provide local governments with the ability to apply indexation (using the PPI Index) annually to increase the capped charges outlined in the SRPP, not at the discretion of the Minister.

s635 (1)(a) and (3) – When charges may be levied and recovered

Issue – Council can only issue a notice when it has given the development approval (or has received the deemed approval). There are cases where Council (under the current Sustainable Planning Act 2009 [SPA]) issues a notice upon receipt of a building approval issued by a certifier. This would be in cases where certain developments may be self-assessable (e.g. a dual occupancy in some circumstances).

Risk – To ensure local governments are able to recover infrastructure charges on all types of development, there is a risk that regulation would be increased so that a development application is always needed (regardless of the complexity of the development), allowing issuing of the infrastructure charges notice. This approach would be inconsistent with State and local government reforms to provide greater certainty to the development industry, reduce development process costs and remove unnecessary regulation.

Opportunity – It is understood that this was an oversight of the Department of State Development and Infrastructure and Planning in drafting. Redrafting s635 to allow infrastructure charges to be levied and collected on self-assessable development would resolve this issue.

s659 to s662 – Conversion of non-trunk to trunk

Issue – The ability for an applicant to submit an application to convert conditioned non-trunk infrastructure (that is typically expected to be provided as a part of development) into trunk infrastructure. The Bill or Explanatory Notes do not provide any guidance (the regulation noted in s660 (2) is not available) on the considerations Council should use to decide whether to approve an application or not. There is also a significant concern that the decision of Council is appealable.

Risk – It is typical for the value of contributed trunk infrastructure items to far outweigh the amount of adopted infrastructure charges collected by a local government in any one year. This makes the test for the deeming of trunk infrastructure, as well as the requirements for the provision of offsets and refunds for necessary trunk infrastructure and additional trunk infrastructure costs critical to the financial sustainability of a local government.

Logan City Council has previously converted non-trunk infrastructure to trunk infrastructure and provided offsets to the applicant. Whilst this approach has been on a case-by-case basis, Council has indeed satisfied itself that the infrastructure would be considered trunk infrastructure.

Specific concerns include:

- 1) Without a clear and rigorous application process, Council is open to unmanaged risk of having to fund 'deemed trunk' infrastructure across several development fronts. This will create uncertainty and delay in the development assessment process as local governments will be apprehensive to approve these types of developments as a way to manage this financial risk.
- 2) These provisions will likely promote out-of-sequence development which typically has a greater infrastructure cost. Currently, local governments can prioritise development sequencing based on efficient and cost effective infrastructure delivery. This conversion process will likely be used by developers to offset the costs of their development, compromising the economic benefits of sequencing infrastructure delivery.

- 3) Where out-of-sequence development builds infrastructure that is 'deemed' trunk, local governments will be required to maintain these items of infrastructure. This will incur increased maintenance costs for infrastructure that is not yet required in accordance with the planned sequence, resulting in inefficiencies and inequity for the community.
- 4) The opportunity of an applicant to appeal a local government decision is unnecessary. These appeal rights creates significant uncertainty and represents too great a financial risk to a local government. The local government will have an endorsed PIP (LGIP) in place and it is considered more appropriate that consideration of what is trunk infrastructure be dealt with through the preparation and review of that planning document.

Opportunity – The current conditioning powers for necessary trunk infrastructure (s649 of the SPA) and additional trunk infrastructure costs (s650-652) as well as the powers to enter into infrastructure agreements are well developed to ensure both the financial sustainability of local governments and the feasibility of developments. They also provide flexibility for local governments to adapt network planning where suitable alternatives are proposed by developers. These provisions have worked well for Logan City Council.

Where the proposed legislation continues to allow for an applicant to submit a conversion application to convert conditioned non-trunk infrastructure into trunk, the following tests are considered appropriate:

- 1) Is the infrastructure identified in the PIP (LGIP).
- 2) If it is not identified in the PIP (LGIP), does it provide the same function and desired standard of service (DSS) as a trunk infrastructure item identified in the PIP (LGIP), and is the local government satisfied that it could replace the identified item.
- 3) If it is required to service out of sequence development:
 - a) is it identified in the local government's longer term infrastructure plan; or
 - b) does it provide the same function and DSS as a trunk infrastructure item identified in the long term infrastructure plan, and is the local government satisfied that it could replace the identified item.
 - c) Does a third party engineering/planning report support that the infrastructure will be required to service future development of other premises in accordance with the planned demand assumptions stated for the other premises in the LGIP.

The timing of the application must also be considered. It may be more appropriately dealt with at the operational works application stage, not the planning application stage.

If tests of this rigour could not be included in the Bill, it should be left for each local government to specify how it will deal with these applications (recognising each local government will likely deal with these applications slightly differently).

The provisions relating to appeal rights of a local government's decision must be removed. These appeal rights represent too great a financial uncertainty and risk to a local government.

s649 (2) – Offset and refund requirements (cross-crediting) and 'actual value' rather than 'planned' value (SPRP)

Issue - Where an item of infrastructure can be offset against infrastructure charges, a local government is procuring that item of infrastructure. The legislative requirements associated with local government procurement are provided to ensure local governments are prudent, transparent and efficient in their use of public funds to procure goods and services.

However, the Bill allows the provision of offsets and refunds for 'deemed trunk' infrastructure for the actual cost incurred by a developer, significantly impacting on the ability of a local government to manage its planned procurement of infrastructure (this becomes a developer process instead of a local government process). The Bill does this by proposing mandatory offsets (and refunds where applicable) for items of infrastructure that have not been planned by the local government, and for an actual cost that will not be known at the time of the development approval.

This will also lead to delays in timeframes to decide development applications as local governments have to resolve the offset amount (actual costs will only be available following detailed design, much later in the process) for inclusion on the infrastructure charges notice at the time of planning approval.

Risk -

- 1) Out of sequence development can deliver items of infrastructure to service their development that are 'deemed trunk' despite not being required by the local government.
- 2) 'Deemed trunk' infrastructure can be used to offset infrastructure charges, despite local governments not planning to provide these items within particular timeframes, forcing local governments to reprioritise capital works programs.
- 3) The value of the offset will not be known at the time that the development approval occurs, as the value of the offset is the 'actual value' that the developer incurs, rather than any planned value. This transfers the risk profile of delivering the item of infrastructure from the developer to a local government and the community, who have no control over the delivery of the item of infrastructure.
- 4) Cross crediting across networks (within an authority's jurisdiction) is mandatory. This will force significant and uncoordinated reprioritisation of local government capital works programs, as the total value of the infrastructure charge for a development is available to offset against an item of infrastructure. This Bill reinforces the transfer of the risk profile of delivering the item of infrastructure from the developer to the community and will limit the capacity of local government to deliver the right infrastructure at the right time for its existing communities.

Opportunity – Amend the proposed legislation to remove s649 (2) and ensure the SPRP does not require the application of 'actual' value to offsets and refunds in order to avoid the significant risk this option may have on the financial sustainability of a local government and the likely delays to the development assessment process. Provisions relating to cross crediting should also be removed.

s627 - Definition of 'establishment cost' (existing infrastructure)

Issue – The establishment cost of existing trunk infrastructure is required to be based on a local government's asset register. Currently, the value is based on the replacement cost of the item using contemporary materials, construction methods, etc. The matter becomes relevant in calculating the network charge using the 'average approach'.

Risk – Local governments who calculate the infrastructure charges based on the establishment cost of their infrastructure networks will be using a different 'establishment cost' for this purpose than the publicly available 'establishment cost' outlined in the LGIP, making the recalculation of the charges unavailable for the development industry. This reduces transparency and certainty for the development industry.

Opportunity – Amend S627 to allow the current definition of ‘establishment cost’ (existing infrastructure) to remain.

s636 (1) – Limitation of a levied charge

Issue – The charge can only be for additional development, making discounts mandatory. This proposed intent of the Bill is supported, but it appears to inadvertently provide discounts in circumstances where no discounts are applicable, as follows:-

- a discount for a network must be provided irrespective whether the use is serviced with the network (e.g. water supply); and
- a discount must be provided for a (previously) approved application, irrespective if the approval was actually taken up (and paid for).

Opportunity – Amend s636 (1) to exclude discounts provided where:-

- the property is not serviced by the infrastructure network; and
- the discount is only applicable where an approved development application has commenced use and paid the applicable infrastructure charges.