CITY OF GOLDCOAST.

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16 May 2014

The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
Brisbane, Qld 4000

Dear Sir/ Madam

Sustainable Planning (Infrastructure Charges) Amendment Bill 2014

On 2 May 2014, officers from the City of Gold Coast responded to a request from the Department of State Development, Infrastructure and Planning to provide comment on a pre-consultation draft of the Sustainable Planning (Infrastructure Charges) Amendment Bill 2014 (Bill).

On 8 May 2014, Council officers were made aware the Bill was tabled in Parliament that day and that an open invitation was made by State to provide further comment on it to the State Development, Infrastructure and Industry Committee (Committee) by 16 May 2014.

The Bill as tabled poses a number of questions for our city. Below is a summary of the priority issues that officers raised in their earlier submission to the Department and which Council would like to reiterate to the Committee.

Transitional Provisions

Council is concerned to see that appropriate transitional legislation is put in place to manage the reforms. The Bill addresses many of the transitional issues, however, it is suggested that further consideration be given to enabling local governments' sufficient time to respond to the requirement for:

1. A charges resolution to include a methodology for working out the cost of the infrastructure the subject of the offset or refund;

2. An infrastructure charges notice to include details of an applicable offset or refund; and

3. An LGIP that was a PIP to comply with the new (not yet available) requirements, and to be reviewed within five years of taking effect.

Conversion of Non-Trunk Infrastructure to Trunk Infrastructure

The proposed new application for converting non-trunk infrastructure to trunk infrastructure is a process the City does not support. The primary basis for this position can be summarised as follows:

1. It will detract from a local government's ability to plan and design the relevant infrastructure networks because it may force acceptance of infrastructure proposed by an applicant;

2. It could result in local governments being forced to offset for land or works that it does not otherwise want or has not planned for. This, in turn may have unintended budgetary impacts in terms of any requirement for refund/offsets depending on how the "value" is assessed;

3. There may be significant cost differences between what a developer provides and the cost of what would otherwise be considered an acceptable solution;

4. It may give rise to specific difficulties in relation to parks, particularly in relation to the requirement to accept parks, which do not meet the Desired Standards of Service in terms of flood immunity. Such parks arguably provide a "trunk function" for the majority of the year but are also likely to give rise to significant maintenance obligations for local government; and

5. The conversion applications may be complex, time consuming, administratively burdensome, and the outcome uncertain, which in turn could lead to ongoing disputes between local government and developers, and result in time delays and additional costs for the industry.

Terminology

The Bill will amend various terms within the Act. For instance an 'adopted infrastructure charges resolution' is to now be described as a 'charges resolution' and an 'adopted infrastructure charge' is to become known as an 'adopted charge'.

It is considered that the proposed change in terminology is administratively burdensome and confusing without delivering any identifiable benefit for local governments or industry.

It is recommended that the Bill maintain existing terminology where relevant.

Rights to Appeal

Council is concerned that the Bill seems to have increased the types of appeals that can be lodged. In addition it is disappointing to see the *Wednesbury* unreasonableness ground of appeal being maintained. Council's experience is this ground of appeal has led to lengthy, complicated, costly appeals which never get to hearing.

A detailed list of all comments on the Bill is attached in the document titled *'City of Gold Coast Council Comments - Sustainable Planning (Infrastructure Charges) Amendment Bill 2014'.*

The City of Gold Coast looks forward to working with the State and helping to deliver the right reforms to Queensland's planning system.

Should you have any questions or would like to discuss these issues further do not hesitate to make contact with either myself of Christopher Davis via ph. 07 5582 8645 or email cwdavis@goldcoast.qld.gov.au.

Yours faithfully

Gail Connolly
Director Planning & Environment
For the Chief Executive Officer
Council of the City of Gold Coast

Enclosed
City of Gold Coast Council Comments - Sustainable Planning (Infrastructure Charges) Amendment Bill 2014

City of Gold Coast Council Comments - Sustainable Planning (Infrastructure Charges) Amendment Bill 2014

New section	Current section	Section purpose	Notes	CoGC Comments
91A	628	To outline the requirements regarding reviewing LGIPs and the involvement of state agencies and distributor-retailers in that review.	No significant application or content changes.	Council submits that clause 980 be amended to clarify that the requirement to review the LGIP every 5 years does not start until the amending Act commences. Clause 980 should be amended to add a new subsection as follows:- "(3) For an LGIP referred to in this section, the requirement in section 91A to review the LGIP every 5 years starts on commencement of the amended Act."
117	627	Requires that a LGIP must be prepared, made and amended in accordance with a statutory guideline made by the Planning Minister and prescribed under a regulation.	This section has been moved to Chapter 3 of SPA, which provides a head of power for the making of statutory guidelines.	Council seeks clarification as to what will be in the statutory guideline, in particular what the technical requirements will be for LGIPs and whether the guidelines will set out the desired standards of service for development infrastructure.
347 (1) (f)	No section	Clarifies that a condition must not require an applicant to enter into an infrastructure agreement.	This amendment simply clarifies the intention of current arrangements in the Act.	Council submits that this provision should be amended to allow for a condition to require an applicant to enter into an infrastructure agreement if it is requested by the applicant (which is very often the case).
478	478	Outlines an applicant's appeal rights to the Planning and Environment Court for matters in relation to an infrastructure charges notice.	New section 478 is intended to provide greater clarity in regards to what an infrastructure charges appeal may be about and provides for appeals about the application of new section 636 (charge limitations) of the SPA.	Council submits that clause 478(2)(a) of the Bill should be omitted. Council's experience is that the *Wednesbury* unreasonableness ground of appeal is uncertain in scope and is used as a catch all ground of appeal when a specific ground of appeal is not otherwise available. This uncertain scope has, in Council's experience lead to lengthy, complicated, costly appeals which never get to hearing. If the State are committed to maintaining the *Wednesbury* unreasonableness ground of appeal it is recommended Council submit that a new sub-clause be added to 478 which would provide "For the sake of clarity an adopted charge issued strictly in accordance with the SPRP (adopted charges) cannot be appealed on the ground of *Wednesbury* unreasonableness." The current section 478 clearly restricts appeals against methodology; however the new clause 478 arguably narrows the restriction but relating it back to a decision about an offset or refund. Council submits that clause 478(3)(b) of the Bill be amending by deleting "for a decision about an offset or refund". However, if clause 478(3)(b) of the Bill is retained, Council recommends that there is a definition of the term 'methodology'.
478B	No section		Provides that an applicant for a conversion application under new section 659 may appeal to the Planning and Environment Court against a refusal or deemed refusal to make the conversion of non-trunk infrastructure into trunk infrastructure.	Council opposes the inclusion of this new ground of appeal on the basis it may exponentially increase the number of appeals, which has cost implications for developers and local governments.
Chapter 8 Infrastructure				
626	No section	Extends the meaning of 'development approval', 'applicant for a development approval' and 'the giving of a development approval' to include the equivalent actions or documents for permissible change and compliance assessment.	New section 626 provides for the processes outlined in Chapter 8 to apply to permissible change applications and compliance assessment applications as if they were a development application without having to name each type of application in every instance.	Council seeks clarification as to the effect of clause 626(3)(a) of the Bill. In particular, does this provision allow or require the recalculation of infrastructure charges under the applicable charging instrument in place at the time of the change request. For example, could a change request result in PIP charges being recalculated under the AICR, or charges imposed under a condition on an approval being deleted and replaced by an infrastructure charges notice?
630	648D & 648E	Establishes the power for local government to set infrastructure charges through a charges resolution.	New section 630 sets the head of power for a local government to set adopted charges through a resolution and identifies development for which a charge cannot be levied.	Council submits that the proposed change in terminology is administratively burdensome without delivering any identifiable benefit for local governments or industry. For example, there will be a 'charges resolution' rather than an 'adopted charges resolution', and an 'adopted charge' rather than an 'adopted infrastructure charge'.

New section	Current section	Section purpose	Notes	CoGC Comments
633	No Section	Provides that a charges resolution must include the methodology for working out the cost of infrastructure subject to an offset or refund.	New section 633 works in conjunction with new section 657 to provide a process for determining the true value of infrastructure at the development approval stage.	Council requests a copy of the State's methodology for working out the cost of infrastructure the subject of an offset or refund. When will it be made available?
636	No section	Establishes a methodology for determining the levied charge when there is an existing lawful use right on the land the subject of an application.	Commonly known as 'crediting' for existing lawful use rights.	Council submits that this clause of the Bill needs to be clarified to make it clear what is captured by "existing uses that are lawful", as this clause departs from the already defined term "lawful use" in section 9 of SPA.
637	648F	Identifies the information to be included within an infrastructure charges notice.	This section includes the addition of a provision specifying that if applicable, details of an offset or refund must be included in the infrastructure charges notice.	Council submits that clause 637(1)(f) of the Bill be amended as follows "(f) whether an offset or refund under this part applies and if so:- a) details of the offset or refund; or b) details of the methodology that will be applied to calculate the value of the offset or refund." The intent of this proposed amendment is to capture those situations where it is impossible to calculate the value of the offset or refund at the time the charge notice is issued, but still provide the applicant with certainty about the methodology to be applied. For example flood immunity of a dedicated park will impact on its value and this will not be known until development proceeds.
638	648H	Specifies when levied charges have to be paid.	This section now includes a final inspection notice as an additional trigger point for the when charges are payable in relation to a building approval.	Council seeks clarification on the intent of clause 638(1)(d) of the Bill, in particular what 'other development' is intended to be covered, does it include OPW approvals for example?
639	648K	Provides proponents and local governments with the flexibility to make alternative arrangements for paying or providing infrastructure	The most significant change to this section is the exclusion of existing provisions relating to development infrastructure that is land.	Council submits the ability to defer payment of infrastructure charges through infrastructure agreements should be limited to a term of 2 years.
657	No section	Applies when determining the offset or refund due. An applicant can require a local government to determine the cost of providing the applicable infrastructure using the methodology outlined in its resolution.	The intention of this section is to provide applicants with a consistent process for confirming the value of trunk infrastructure to be provided.	Council recommends the State develop an application form to be used for these requests, so the onus is placed on the applicant to provide all relevant information with the request.
658	No section	Provides that Chapter 8, Division3, Subdivision 1 applies where a condition of a development approval requires the provision of non-trunk infrastructure.		Council seeks clarification from the State about whether it is intended this subdivision only apply to development approvals given after the commencement of the amending Act, and submit that this should be the case. This could be clarified by amending clause 658 as follows:- "(c) the development approval was given after the commencement of the amending Act."
659	No section	Establishes the powers for an applicant to convert infrastructure to trunk infrastructure.	A conversion application can only be about non-trunk infrastructure that the applicant has been conditioned to provide.	Council does not support the introduction of this process for the following reasons:- ▪ It will detract from a local government's ability to plan and design the relevant infrastructure networks because it may force Councils to accept infrastructure proposed by an applicant. ▪ It could result in local governments being forced to offset for land or works that it does not otherwise want or has not planned for. This, in turn may have unintended budgetary impacts in terms of any requirement for refund/offsets depending on how the "value" is assessed. ▪ Council's view is that it should only have to offset/refund the cost of infrastructure that it has charged for. ▪ There may be significant cost differences between what a developer provides and the cost of what would otherwise be considered an acceptable solution. ▪ It may give rise to specific difficulties in relation to parks, particularly in relation to the requirement to accept parks which do not meet the DSS in terms of flood immunity. Such parks arguably provide a "trunk function" for the majority of the year but are also likely to give rise to significant maintenance obligations for local government. ▪ The conversion applications may be complex, time consuming, administratively burdensome, and the outcome uncertain, which in turn could lead to ongoing disputes between Council and developers, and result in time delays and additional costs for the industry.

New section	Current section	Section purpose	Notes	CoGC Comments
				Council suggests the State develop an application form to be used for conversion applications, so the onus is placed on the applicant to provide all relevant information with the request.
662	No section	Applies where a decision under section 661 is taken to convert non-trunk infrastructure to trunk infrastructure.	The local government can amend the development application and issue a new condition for trunk infrastructure to reflect the fact that the infrastructure required is inconsistent with the LGIP.	Council seeks clarification about whether it is intended that LGIP's be amended to reflect the conversion of non-trunk to trunk infrastructure.
671	No section	New section 671 provides that if a public sector entity has proposed to another entity (either a party) that they enter into an infrastructure agreement, and vice versa, each party must in good faith attempt to negotiate the agreement	The intention of this section is to encourage open, timely and cost effective negotiation of infrastructure agreements. 672	Council seeks clarification about the meaning of clause 671(3) of the Bill, in particular what "may be considered in the performance of function under IDAS" means.
Chapter 10, Part 11				
980	No section	Transitions existing PIPs into LGIPs and therefore provides for a reference in the legislation to an LGIP to apply to existing PIPs.		Council submits that clause 980 be amended to clarify that the requirement to review the LGIP every 5 years does not start until the amending Act commences. Clause 980 should be amended to add a new subsection as follows:- "(3) For an LGIP referred to in this section, the requirement in section 91A to review the LGIP every 5 years starts on commencement of the amended Act."