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

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

Dear Sir / Madam

Far North Queensland Regional Organisation of Councils (FNQROC) submission on the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014

The Far North Queensland Regional Organisation of Councils (FNQROC) member Councils include Cairns Regional Council, Cassowary Coast Regional Council, Tablelands Regional Council, Cook Shire Council, Croydon Shire Council, Douglas Shire Council, Hinchinbrook Shire Council, Mareeba Shire Council and Yarrabah Aboriginal Shire Council and Wujal Wujal Aboriginal Shire Councils.

Thank you for the opportunity to submit on the proposed Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014 (the Bill).

The timeframe within which submissions were able to be made on this Bill was extremely short and did not allow enough time for a comprehensive and complete review of the Bill across Councils. We strongly recommend that in the interest of Councils' long term financial sustainability, a full and proper comprehensive consultation should be carried out on the Bill, to ensure its provisions are workable and do not have unintended consequences.

FNQROC supports the Local Government Association of Queensland's submission on the Bill. However, we would like to include some additional commentary.

Councils within this region are in a unique position as a number of them are currently preparing their new planning schemes. A number of the changes presented in the Bill are pertinent to the process of preparing our new planning scheme; in particular, the requirement to prepare a Local Government Infrastructure Plan (LGIP). Our comments regarding this aspect and others are discussed in more detail below:

1. Amendment of s335 – Content of decision notice

   With regard 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 they impose conditions which are lawful and developers 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 will take to prepare a decision notice, and the complexity of decision notices.

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We request 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).

2. Amendment of s347 – Conditions that cannot be imposed

The proposed inclusion of section 347(1)(f) in 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 which services a broader area than the development site has the potential to be struck out by the Court on the basis 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 be refused.

3. Clause 976 - Deferment of the requirement to prepare a Local Government Infrastructure Plan

We note clause 976, which defers the requirement for Local Government with an existing planning scheme which does not include a Priority Infrastructure Plan (PIP) to not include an LGIP until 1 July 2016.

Under the Sustainable Planning Act 2009 (SPA) new planning schemes are required to include a PIP. In light of wholesale reform of the infrastructure planning and charging framework, some Councils have been reluctant to include a PIP in the absence of the reform outcomes. Now that the Bill has been introduced to Parliament, there is some degree of certainty regarding infrastructure planning.

It is important to integrate land use and infrastructure planning and PIP's / LGIP's achieve that objective. We are committed to the preparation of an infrastructure plan; however, we would like to be afforded the timeframes allocated to other Local Governments which do not have a PIP.

To this end, we request that clause 976 be amended so that:

The 'saving provisions' be extended to include Local Government's making or preparing a planning scheme.

This would allow the progression of our new planning schemes in the absence of a PIP and give us adequate time to prepare an appropriate infrastructure plan. Should the recommended change not be made, and the requirement for new planning schemes under SPA to include a PIP prevails, this has the potential to delay the progression of new planning schemes significantly and it is envisaged that the time and resources required to prepare a PIP / LGIP are potentially considerable.

4. Clause 633 – Working out cost of infrastructure for offset or refund

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

With the ethos of the State that Council are the decision makers, 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 will be 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, depending on what will provide it with the maximum refund. There should be one method for calculating infrastructure costs for the purposes of offsets and refunds.

How infrastructure is costed for the purposes of an offset or refund should be the decision for Council. If this does not occur, there should be one method for calculating infrastructure costs for the purposes of offsets and refunds.

5. Clause 635 - Levying charges

Clause 635 limits Local Government's ability to issue an infrastructure charges notice on development approvals where they are an assessment manager or concurrence agency. Currently under SPA, Local Governments can issue an infrastructure charges notice upon receipt of a development approval by others (eg. private certifier for building work).

Limiting the circumstances in which Local Governments can issue infrastructure charges, notices reduces the ability to adequately recover costs associated with the infrastructure works required to accommodate the increases in demand placed on networks from development.

There will be a cumulative increase in demand on Local Government's infrastructure networks which will not be accounted for. In addition, this will limit Councils' appetite to reduce the levels of assessment for development in preparing new planning schemes as proposed in the Bill. This type of development will have an impact on infrastructure networks which will also go unaccounted for should the Local Government's ability to issue infrastructure charges notices be limited.

We request that clause 635 be amended to:

Allow the issuing of infrastructure charges notice triggered by development approval including building permits and operational works approvals.

Clause 626 of the Bill does not allow an infrastructure charges notice to be issued with an approval to a request to extend the relevant period.

To avoid requiring applicants having to reapply for development approvals or appeal a refusal of the request so that an infrastructure charges notice can be issued, we request that clause 626 be amended to:

Include the extension of relevant periods.

There are contradictions contained within Clause 635 regarding the levy of a charge on 'the applicant'. Clause 635(2) requires Local Governments levy a charge on the applicant. Clause 635(6) (b) provides that a levied charge under the notice is payable by the applicant and Clause 635(6) (c) that the levied charge attaches to the land.

We request Clause 635 be amended to:

Ensure that infrastructure charges bind upon successors in title and run with the land not the applicant.

6. Clause 636 – Mandatory lawful existing use credits

Clause 636 introduces mandatory credits for lawful use rights which are in existence prior to a development approval. This includes a development existing on a site and a development approved by existing development approvals.

We currently apply credits for demand generated by lawful use rights which are in existence prior to a development approval. However, we do not consider lawful use rights relating to existing development approvals as creditable, as the demand has not been realised.

There may be some circumstances where by existing development approvals are unacted upon and superseded by subsequent applications over the site. Clause 636 allows those lawful use rights relating to the existing development approvals to be considered as creditable demand. If the original development approval was not acted upon and infrastructure charges were never paid, infrastructure charges associated with subsequent approvals must consider the demand generated by the existing development approvals as credit. Council therefore does not recover the original infrastructure charges but has to consider the unrealised demand generated by a development approval as creditable which creates an unbalanced approach to crediting arrangements.

We request that clause 635 be amended to:

***Exclude additional demand created development approved by existing development approvals**.*

7. Clause 637 – Requirements for infrastructure charges notice

The requirement, in clause 637(2), for an infrastructure charges notice to include an information notice about the decision to give the notice, in 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. The 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.

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.

8. Section 649 Offset or refund requirements

As stated previously, we disagree 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, it appears 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 ultimately all the contributions made by an applicant as part of a development is being directed to a single infrastructure item.

With Councils financial sustainability at the fore, Council cannot afford to potentially open itself up to an undetermined financial liability that has not been budgeted for.

9. Clause 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 the applicant can elect to construct the works instead of making the payment in accordance with proposed section 651.

It is submitted that the assessment manager should be able to determine the preferred way of ensuring the infrastructure is provided.

10. 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).

It is submitted that 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.

11. Clause 654 Refund if development in PIA

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 reflect this.

12. Clause 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 reflect this.

13. 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 reflect this.

14. Challenges allowed to charging methodologies and infrastructure

Clause 657 details the process where an applicant does not agree with the value of the establishment cost. The applicant may require it to use the method under the relevant charges resolution to recalculate the establishment cost for offsets and refunds.

The Bill defines the ‘establishment cost’ for a provision about future trunk infrastructure to include all costs of land acquisition, and design and construction, for the infrastructure. It excludes financing costs for the infrastructure.

Clause 657 makes provision for the methodology to be confirmed to parameters identified in the SPRP (Adopted Charges) or an alternative guideline prepared by the Minister.

We cannot support these provisions in the absence of the methodology.

Clause 657 - 662 details the process where an applicant requests to convert infrastructure to trunk infrastructure.

The ability to challenge the nature of infrastructure may have financial implications for Councils through the inclusion of non-trunk infrastructure in their trunk infrastructure plan. This may undermine their infrastructure plan integrity in that infrastructure costs will be subject to change and amendment through this process. Also financial forecasting (for offsets and refunds) we undertake will be subject to these variations also.

We cannot support these provisions given the unknown financial implications for Councils at this point in time.

15. Clause 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 request 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".

We look forward to the release of further information and material regarding the infrastructure charging and planning reform and the opportunity to comment on that in the future.

Should you have any further enquiries or require additional information, please contact me on 07 4044 3038 or 0403 808 680.

Yours sincerely

Darlene Irvine
Executive Officer