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Dear Committee

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

This submission is made to you following an examination by the Urban Development Institute of Australia (Qld) (the Institute) of the contents of the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014 (the Bill) and with the assistance of our numerous policy committees and regional branches across Queensland. Our committees and branches include individuals with a diverse range of skills and expertise, but critically include a number of developers who are actively undertaking development within Queensland.

At the outset, the Institute would like to commend the Department of State Development, Infrastructure and Planning (DSDIP) for what has been an excellent stakeholder engagement process on infrastructure charges. This is particularly impressive given the sensitivities and complexities associated with this reform.

The Institute notes that the core policy objective of the Bill is to 'establish a long-term local infrastructure planning and charging framework that is certain, consistent and transparent and which supports local authority sustainability and development feasibility in Queensland'. It is the Institute's considered position that the Bill will deliver a net improvement to the framework that currently exists, however in our view that the proposed changes to the framework will not sufficiently deliver on the core policy objectives of the Bill.

The infrastructure planning and charging framework reforms involve both legislative and non-legislative changes. This submission will deal predominantly with the legislative changes. The Institute will be making a separate submission to Government in relation to the non-legislative aspects of the framework reforms such as the establishment of the *Priority Development Infrastructure Co-investment Program.* Appendix Two to this submission includes the Institute's submission to a DSDIP discussion paper in August 2013 on the infrastructure planning and charging framework. The Institute's policy position detailed in that discussion paper submission remains unchanged and we urge the Government to give it further consideration.

The Institute welcomes a number of aspects of the Bill that will deliver greater certainty for industry and in some instances, lower costs for developers and therefore new home buyers. In particular we welcome the following (subject to the content of as yet developed regulations and statutory guidelines):

1. Clearer rules relating to the provision of credits, offsets and refunds.
2. Mandatory ‘cross-crediting’ across infrastructure networks.
3. Mandating credits for existing use rights.
4. Availability of offsets and refunds at actual value rather than ‘planned value’.
5. The ability to apply to have infrastructure ‘deemed’ to be trunk, even if it has not been identified as trunk infrastructure in a local government infrastructure plan (the ‘conversion application process’).
6. The ability to issue a new adopted infrastructure charges notice in response to a permissible change.

The Institute also welcomes the State’s announcement that it will establish a *Priority Development Infrastructure Co-investment Program*. We urge the State Government to ensure that the program is adequately funded, well-designed and, most importantly, ensures local governments (LGs) are engaged and reduce their charges.

The Institute is, however, disappointed that the proposed reform package will not involve amendments to the State Planning Regulatory Provision (Adopted Charges) to mandate reductions in excessive taxes on new home buyers.

Whilst the greater certainty regarding conditions, credits, offsets and refunds as proposed in the Bill are welcome, the Institute estimates that more than 80% of all development applications do not deal with such matters. The vast majority of small and medium sized developments across Queensland simply pay their infrastructure charge and are not required to construct and donate infrastructure. **For the majority of developers therefore, the level of the infrastructure charge is critical.** If charges are not reduced as part of the wider infrastructure reform package, the result will be that the reforms will benefit only a small part of the industry and in turn, only a small proportion of new home buyers.

In summary, this submission by the Institute calls for the following key changes:

1. That the Bill and State Planning Regulatory Provision (Adopted Charges) be amended to mandate a significant reduction in maximum charges. For residential charges, we recommend:

    - A 25% reduction in charges for greenfield development in South-East Queensland.
    - A 40% reduction in charges for infill development in South-East Queensland.
    - A 40% reduction in charges for all residential development outside South-East Queensland.

2. In respect of conversion applications:

    - that Chapter 8, Part 2, Division 3, Subdivision 1 be amended to make it clear that the conversion application must be made prior to construction of infrastructure commencing, but need not be finally decided before construction starts; and
    - that a regulation include:
        - clear decision rules and objective tests regarding whether infrastructure serves a trunk function;

- a list of items that are automatically deemed to be items of trunk infrastructure.

3. That the Bill be amended requiring that:

   - Refunds be payable within five years of works being constructed.
   - Outstanding refunds be indexed to an appropriate business lending rate published by the Reserve Bank of Australia.
   - Developers have the right to deduct any unpaid refunds against an infrastructure charge on another development in the same Local Government Area.

4. That the Bill be amended to require only that the ICN detail what items are offsettable and refundable to provide certainty to developers whilst at the same time avoiding the need for detailed and costly design work being completed prior to a DA.
5. That section 649 of the Bill be amended to make it clear that cross-crediting is mandatory across all five infrastructure networks whether or not a water DR exists in an area.
6. That the Bill outline a process to be established whereby a party can elect to have a compulsory mediation process initiated if there has been a failure to execute an IA within three months of a development permit taking effect, and that the mediator be given powers to make binding decisions within a set period of time.
7. That the Bill be amended to require local government and water DRs to audit and report annually on the collection and expenditure of infrastructure contributions, as well as on the infrastructure delivered as a consequence of development conditions.
8. In respect of third party review of LGIPs, that the Bill or regulation make it clear that:

   - The third party cannot be an entity that was involved in preparing the LGIP for the local government.
   - The third party review be made a public document upon completion.

   For the third party review process to add value it is essential that:

   - The reviewers are appropriately qualified.
   - The parameters of the third party review are clearly set (these must include a technical assessment).
   - LGIPs are developed using standard inputs to enable meaningful comparison.
   - The third party undertakes a technical assessment of the underlying assumptions, costing and design standards.
9. That the Bill be amended to clarify that a component of a levied charge cannot be applied where no demand is being generated with respect to that component (e.g. levying of sewerage charges where on-site sewerage is proposed).

A number of other recommended amendments to the Bill are included in Appendix One.

General Comments

The infrastructure framework introduced in 2011, failed to deliver efficiency, transparency, predictability, equity, or competitiveness. Uncertain and excessive infrastructure burdens placed on developers and in turn new home buyers are undermining development opportunities and harming home affordability, the economy and jobs. Of all the policy issues that impact on the development industry, infrastructure charging is the one issue raised most frequently and with the most passion by members of the Institute.

Queensland needs an infrastructure charging framework that delivers greater certainty and ensures that new home buyers are not burdened with excessive and unfair charges and conditions – particularly outside South-East Queensland. As mentioned at the outset, the Institute is of the view that the Bill and the wider reform package only partially delivers on these desirable features.

The Institute recommends that the Bill and State Planning Regulatory Provision (Adopted Charges) be amended to mandate a significant reduction in maximum charges. For residential charges, we recommend:

- A 25% reduction in charges for greenfield development in South-East Queensland.
- A 40% reduction in charges for infill development in South-East Queensland.
- A 40% reduction in charges for all residential development outside South-East Queensland.

The arguments supporting this recommendation can be found in Appendix Two. Importantly, the Institute believes the reductions proposed above can be delivered without materially impacting on LG financial sustainability. The essential infrastructure list produced by DSDIP in April 2014 forms the basis of the 'fair value charges schedule'. Fair value charges derived from this essential infrastructure list result in a reduction of 10 per cent for residential dwellings relative to the maximum regulated charge. The Institute is of the view that further work needs to be done on this fair value charges schedule for two reasons.

1. The modelling underlying the fair value schedule makes no attempt to interrogate the design standards of the items of infrastructure included in the fair value list (with the exception of imposing a maximum cap on the quantum of parkland that can be the subject of charges and conditions). The Institute is on the record and has provided numerous examples of gold-plating of infrastructure included in local government infrastructure plans.
2. Some of the items on the essential infrastructure list are not essential in our view. The narrower essential infrastructure list detailed in the August 2013 discussion paper on the infrastructure planning and charging framework better reflects what is essential for development to occur.

As already stated, the Institute welcomes co-investment by the State Government in urban infrastructure, however investment should not be offered as a carrot to LGs to reduce their charges, but instead form part of a reform package involving mandatory reductions in charges.

Specific comments on the Bill

<u>Division 3 Subdivision 1 - Conversion of particular non-trunk infrastructure before construction starts</u>

Under the current infrastructure charging framework LGs are able to condition development approvals to provide non-trunk infrastructure which is, in reality, trunk infrastructure (such as a link in an external road network) without being obliged to provide an offset for the cost of the work. This is a result of the current legislative definition of trunk infrastructure which states that trunk infrastructure is infrastructure that LG identifies in its Priority Infrastructure Plan (PIP) or Adopted Infrastructure Charges Resolution (AICR), with all other infrastructure being non-trunk infrastructure. The combination of the definition of trunk infrastructure and the unclear rules relating

to the provision of offsets and refunds effectively renders the existing infrastructure charges cap as a 'Clayton's cap'.

The Institute therefore welcomes the inclusion in the Bill of a process whereby developers can apply to have non-trunk infrastructure converted to trunk infrastructure. This change, combined with the clearer offsetting arrangements proposed in the Bill, will provide greater certainty to developers and the potential to improve feasibility of projects and deliver an increased supply of housing. Some refinements are, however, needed to Division 3 Subdivision 1 of the Bill.

We note that Division 3 Subdivision 1 of the Bill applies only if:

(a) a particular condition of a development approval under section 665 requires non-trunk infrastructure to be provided; and
(b) the construction of the non-trunk infrastructure has not started.

The Institute's interpretation of these words is that to achieve a 'conversion' both the application, assessment and appeal process must all be completed before construction of infrastructure can begin. This time period could be lengthy and costly to the developer and we see no reason why construction of the infrastructure cannot take place whilst this process is underway. Whilst in some cases the developer may wish to wait for a decision because the conversion of trunk infrastructure will make the difference between a project being feasible or not, in other cases the developer may wish to get on with the job.

The Institute recommends that Division 3 Subdivision 1 be amended to make it clear that applications for a conversion must be made prior to construction of infrastructure beginning but that construction may occur at any time after the application is lodged.

Finally, the Bill includes very little detail on how the conversion application process would work. The Institute understands that this will be the subject of a future regulation. If the process is inefficient and few criteria are provided detailing how an application will be assessed, many conditions for non-trunk infrastructure that ought to be converted to trunk will not be subject to a conversion application because the costs and time associated with the conversion application will be too large. The Institute recommends that the regulation foreshadowed in 660(2) contain clear decision rules and objective tests (as far as practicable) regarding whether infrastructure serves a trunk function. It is also the Institute's position that the Bill must include a power to make a regulation that includes a list of items that would automatically be deemed to be trunk infrastructure. Over time, the decisions and appeals that have occurred through the conversion process can be incorporated into the proposed regulation such that where a precedent has been set for an item of infrastructure being converted to trunk, that those items can automatically be deemed trunk infrastructure without requiring an applicant to make a conversion application.

<u>Certainty and Refunds</u>

The Bill proposes that the timing of refunds is to continue to be on the terms agreed between the proponent, LGs and water distributor-retailers (water DRs). LGs and water DRs have, however, little incentive to reach agreement with an applicant for the payment of refunds or to provide refunds on a timely basis. It is critical that developers have a refund schedule in place to satisfy its financiers and, in many cases, the timing can be the difference between a development being viable or not. As the LG or water DRs do not need to pay commercial rates of interest whilst the

developer is awaiting a refund, the result is that 'first mover' developers are in fact bearing a burden greater than the demand their development places on an infrastructure network. This is grossly inequitable for those developers (and in turn new home buyers) to be carrying costs associated with infrastructure that benefits others. The costs of shared infrastructure should be funded by LGs and water DRs as they can borrow at lower rates than developers and, as mentioned, it is inequitable for new home buyers to carry the funding cost and risk.

The Institute therefore recommends that the Bill be amended requiring that:

- Refunds be payable within five years of works being constructed.
- Outstanding refunds be indexed to an appropriate business lending rate published by the Reserve Bank of Australia.
- Developers have the right to deduct any unpaid refunds against an infrastructure charge on another development in the same Local Government Area.

The first dot point above was actively under consideration by DSDIP during the stakeholder engagement process.

Not only are mandatory refunds with guaranteed refund timeframes critical for delivering certainty and avoiding inequities, they would indirectly deal in part with industry concerns regarding gold plating of trunk infrastructure.

Potential delays to development approvals

New section 637(1)(f) of the Bill requires that an infrastructure charges notice state whether an offset or refund under this part applies and, if so, details of the offset or refund. Section 657 outlines the process for working out the cost of offsets and refunds.

Whilst the Institute supports the intent of these new sections, we are concerned about the potential impacts on development approval (DA) timeframes if the details of offsets are to be included on the DA ICN. In many cases it would be impossible to include the details of offsets and refunds at the DA stage because the design details that would be required to determine their dollar value would not typically be determined until the operational works stage.

The Institute recommends that the Bill be amended to require only that the ICN detail what items are offsettable and refundable. This detail, combined with the requirement in the Bill for an AICR to detail the formula and method by which dollar values will be determined, is sufficient in our view. This recommended amendment will provide certainty to developers regarding the items that are offsettable and refundable, but avoid requiring detailed and costly design work being needed to be completed prior to a DA.

Cross-crediting

Under the current charging framework it is common for developers to only receive a portion of their expenditure on conditioned trunk infrastructure as an offset. Take for example, a condition to provide roads at a cost to the developer of $10,000 per three bedroom dwelling. LGs, however, may have determined that only $7,000 of the $28,000 standard infrastructure charge is attributable to the roads network and offer an offset of just $7,000 per dwelling, leaving the additional $3,000 to be borne by the developer (and in turn the new home owner). The net result is that the developer is contributing $31,000 per dwelling.

The Institute therefore welcomes the policy decision for LGs to provide offsets against their full charge – not just against the portion of the charge that is theoretically attributable to an individual infrastructure network. This is commonly known as 'cross-crediting'. The Institute holds, however, some concerns that the words in section 649 and section 630(1) of the Bill are not sufficiently clear with regard to mandating cross-crediting. The Institute fears that arguments could be made that the term 'adopted charge' may be interpreted as the charge applied for a particular infrastructure network and not the total adopted charge levied for all infrastructure networks. The Institute recommends that a note is added to the Bill in section 649 to remove any doubt with regard to the policy intent of the Government to mandate 'cross-crediting'.

Further, the Institute recommends that the Bill be amended to clarify that cross-crediting is mandatory across all five infrastructure networks whether or not a water DR exists in an area. Take, for example, a development in Brisbane City Council (BCC). Any condition to deliver trunk infrastructure by Queensland Urban Utilities (QUU) should be offsettable in the first instance against the QUU part of the adopted charge. However, if there remains an unused offset, it should be mandatory that this remaining amount be applied against the BCC part of the charge. A development in one part of Queensland should not be disadvantaged simply by virtue of the fact that an entity other than an LG is responsible for water. The capacity for offsetting should be the same regardless of whether water is dealt with 'in-house' by an LG or by an entity wholly owned by an LG.

Infrastructure Agreements

Infrastructure Agreements (IAs) are an increasingly utilised tool documenting the relationship between an applicant, LGs and other agencies such as water DRs in dealing with matters such as:

- The nature, extent and timing of provision of infrastructure (trunk or non-trunk).
- Offsets.
- Payment and timing of refunds.

In recent years, the variations in the way IAs are drafted, negotiated and executed have led to inconsistent outcomes across Queensland. For developers working across a range of LGs, the result is a greater need to engage the legal profession to review IAs. The timeframe for finalising IAs also varies widely, with agreements often taking several years to complete. Even very simple IAs are costing thousands of dollars and are taking months rather than weeks to complete. Needless to say, the level of uncertainty, and therefore costs, experienced by developers during the negotiation of IAs is high and unacceptable.

In particular, in the case of negotiating offsets and refunds to be included in IAs, lengthy delays occur and negotiations are made extraordinarily difficult and are costly in a legal sense, given that there are no mandatory mechanisms to manage the negotiation. This is particularly the case given that parties to the agreement often involve more than two entities (e.g. LG, developer and water DR). The Institute therefore welcomes the new requirement in the Bill that requires negotiations to occur in good faith (section 671). The Institute recommends the Bill go further and outline a process to be established whereby a party can elect to have a compulsory mediation process initiated if there has been a failure to execute an IA within three months of a development permit taking effect. Further, it is recommended that the mediator be given powers to make binding decisions within a set period of time so as to avoid a protracted mediation process.

The Institute notes that the clearer rules in the Bill regarding conditioning, offsetting and cross-crediting should reduce the number of IAs required. Larger long term projects will continue, however, to utilise IAs, hence the Institute's recommendations to streamline the process.

Transparency

The Council of Australian Governments (COAG) Housing Supply and Affordability Reform (HASR) report identifies as one of the overarching principles for an infrastructure charging framework that[1]:

"Charging regimes should be supported by publicly available information on the infrastructure subject to charges, the methodology used to determine the charges and the expenditure of funds".

At present in Queensland there is a lack of transparency regarding:

- The total quantum of charges collected including the value of infrastructure works constructed by developers and donated to an LG, and
- Where, and on what, the infrastructure charges collected have been expended.

The Institute recommends that the Bill be amended to require LGs and water DRs to audit and report annually on the collection and expenditure of infrastructure contributions.

LGs regularly claim to be significantly out of pocket with regards to the difference between charges collected and funds expended. Conversely, the industry is skeptical that charges collected are in fact being allocated to the infrastructure on which those charges are based. Transparency will assist in building trust between all parties and the information will also allow for more informed debate and assist in the development of policy moving forward.

Conditions

The Bill frequently makes reference to a Priority Infrastructure Area (PIA) as a determining factor for rules relating to charges, conditions, offsets and refunds. The Institute is concerned that some LGs will continue to specify overly restrictive boundaries for their PIA with the result that future greenfield development sites are more likely to fall outside the PIA and be subject to a greater financial burden than would otherwise be the case.

The Institute is of the view that any reference to a PIA in the Bill should be amended to read - 'PIA, a Priority Living Area, or an Urban Footprint under a Regional Plan'.

If the State Government has identified in a Regional Plan that an area is suitable for urban development, then any development within those boundaries should be afforded the same rules regarding charges, offsets, conditions and refunds as those areas included by an LG in their PIAs. The relevance of Regional Plans is undermined if the State Government does not ensure that legislation across Government adequately supports growth in those areas deemed suitable for urban development.

Third Party Reviews of Local Government Infrastructure Plans

[1] See http://www.coag.gov.au/sites/default/files/Final%20Report%20-%20Housing%20Supply%20and%20Affordability%20Reform.pdf

The Institute notes that the Bill requires Local Government Infrastructure Plans (LGIPs) to be subject to a third-party review. The Institute supports this, however we recommend that legislation or regulations make it clear that:

- The third party cannot be an entity that was engaged by the LG to assist in the drafting of the LGIP
- The third party review is to be a public document as soon as it is completed.

For the third party review process to add value it is essential that:

- The reviewers are appropriately qualified
- The parameters of the third party review are clearly set (these must include a technical assessment)
- LGIPs are developed using standard inputs to enable meaningful comparison.

Further, to address gold plating, it is essential that the third party undertakes a technical assessment of the underlying assumptions, costing and design standards. A technical assessment of this nature is sorely needed to provide a degree of transparency and confidence within the industry that both the infrastructure being planned for is in fact needed and that the cost estimates are based on reasonable and transparent assumptions.

<u>The levying of a charge where not appropriate</u>

The explanatory notes provide the following commentary against Section 478(2)(b)(i)), being an example of an error in applying an adopted charge;

"levying a charge where a charge is not appropriate (e.g. imposing a charge where the development does not result in additional demand on the infrastructure networks)."

The above example is one of four (4) listed in the explanatory notes. The Bill includes two of the other examples in the explanatory notes as italicised notes in the Bill. The Bill does not, however, include the quoted example as an italicised note despite this likely being the most prevalent of the four examples in the industry. The Institute therefore recommends that the above quoted example be included as an italicised note under Section 478 of the Bill.

Two examples of where local governments have in the past imposed charges despite the development not resulting in additional demand on the infrastructure network include:

1. Imposing a sewer charge on a development that does not connect to a municipal sewerage network.
2. Imposing a stormwater charge where the development is adjacent to a river or bay, and where that development is providing its own stormwater quality and quantity infrastructure with no impact on upstream works.

In these two examples relating to sewer and stormwater the Bill must make it clearer that LGs must ensure that the adopted charge that is levied is reduced by the amount that reflects the proportion of the total charge relating to sewer / stormwater.

Ongoing Consultation

The Institute is appreciative of the opportunity to comment on the Bill and welcomes the

opportunity to provide more detailed feedback to the Department on the supporting regulations, guidelines and other non-legislative aspects of the infrastructure charging framework reforms.

Yours sincerely
Urban Development Institute of Australia (Queensland)

Marina Vit

Chief Executive Officer

The Institute recommends that consideration is given to making the following further amendments to the Bill:

- Conversion applications: In relation to timeframes, the Institute does not believe that assessing an application for conversion should require 30 business days to complete. The time required need not be any more than that taken to assess a low-risk code assessable development application. The Institute recommends that the 'required period' be reduced to 15 business days.
- Conversion applications: the Institute recommends that the Bill be amended to specify that applications for conversions be made and assessed by an independent third party or state government agency (rather than LGs) with decisions handed down by the third party binding on LGs. This would remove an administrative burden on LGs and ensure a fair and consistent assessment of the application.
- Appeals about an infrastructure charges notice: New section 478(3)(b) (i) and (ii) detail matters relating to offsets and refunds that are not to be the subject of an appeal. The Institute is of the view that the method in which infrastructure costs are determined and the reasonableness of the establishment cost of infrastructure identified in an LGIP should be appealable. Whilst we understand the LGIPs will be subject to reviews at least every five years, it is likely flaws and unreasonable assumptions in an LGIP may not be identified at the time the LGIP is first reviewed. Allowing appeals to be made on these matters will ensure that the methods for costing infrastructure and the content of LGIPs are subject to much needed additional scrutiny.
- Conditions for additional trunk infrastructure costs: Section 650 provides the power to impose conditions for additional infrastructure costs where development exceeds the assumed type or scale of development under the LGIP. The Institute is aware of examples where planning scheme amendments aren't necessarily accompanied by a review of the LGIP (or PIP in current terminology). In such a circumstance the developer, and in turn new home buyer, should not be liable for additional charges. For this reason we recommend that additional charges should only be imposed on development that is inconsistent with the assumptions of both the LGIP and the planning scheme.

APPENDIX TWO – UDIA (QLD) SUBMISSION ON THE 2013 INFRASTRUCTURE PLANNING AND CHARGING FRAMEWORK DISCUSSION PAPER

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Dear Infrastructure Charges Framework review team

Discussion Paper: Infrastructure planning and charging framework review

On behalf of our membership base across Queensland, the Urban Development Institute of Australia (Queensland) (UDIA (Qld)) appreciates the opportunity to respond to the Discussion Paper (DP) on proposed reforms to Queensland's local infrastructure planning and charges framework.

The UDIA (Qld) applauds the government for recognising infrastructure charging as a key issue and for establishing a series of workshops and a process for review.

This submission was prepared with the assistance of numerous UDIA (Qld) Policy Committees and regional branches across the state. Our committees and branches include individuals with a diverse range of skills and expertise, but critically include a number of developers who are actively undertaking development within Queensland.

This submission is organised in two parts. Part A provides a general outline of the Institute's position including comments on issues not directly addressed in the DP. Part B directly addresses each of the DP's reform options.

Despite some changes introduced in 2011, the infrastructure charging framework remains flawed and fails on all counts of efficiency, transparency, predictability, equity, as well as competitiveness. Uncertain and excessive infrastructure burdens placed on developers and in turn new home buyers are undermining development opportunities and harming home affordability, the economy and jobs. Of all the policy issues that impact on the development industry, infrastructure charging is the one issue raised most frequently and with the most passion by members of the UDIA (Qld).

Queensland needs an infrastructure charging framework that delivers greater certainty and ensures that new home buyers are not burdened with excessive and unfair charges and conditions – particularly in the regions. Failure to deal with both the level of charges and other elements of the charging framework will undermine the State's objective of growing the property and construction sector – one of the four pillars of the Queensland economy.

The Institute looks forward to further engagement with the Government during the implementation phase of reforms as well as participating in the detailed analysis of the charges cap that will take place over the remainder of 2013. In regards to capped charges, the Institute supports a three-tiered capped charges system for residential development, featuring lower charges as follows:

- A lower capped charge for greenfield development in SEQ.
- A substantially lower capped charge for infill development.
- A substantially lower capped charge for all development in areas outside SEQ.

Charges outside SEQ in particular need to be substantially reduced and set at a lower level than for SEQ. The main rationale for this is that a charge outside SEQ impacts project feasibilities to a greater degree than the same dollar charge in SEQ due the lower price points in regional areas (on average) for new dwellings. In addition, we note that modeling in the DP on page 21 suggests that the cost of delivering essential infrastructure is, on average, lower than the existing maximum allowable charge – particularly in the regions. Further it is important to note that to deliver effective reform, both the 'elements' of the framework and the level of the cap must both be addressed. A significant proportion of development applications, particularly infill and smaller projects, are not subject to conditions requiring the construction of trunk infrastructure and are not required to deal with matters such as offsets and refunds. For this significant component of development industry activity the level of the charge is key.

At the outset, the Institute acknowledges that many of the proposals in the DP represent a welcome and necessary shift from current practice. Whilst the Institute deals with each section of the DP in turn in section B, we suggest that reform options in the DP must be seen as a 'package deal'. For example, new proposed rules regarding offsets will potentially be ineffective unless it is delivered in conjunction with the proposed 'deemed trunk' infrastructure test. Proposed changes to the framework will only be effective if all of the proposed alternate positions are adopted. A partial implementation, or partial status quo, will leave weak points that can be (and have been, as demonstrated by history) exploited.

Yours sincerely
Urban Development Institute of Australia (Queensland)

Marina Vit
Chief Executive Officer

PART A: Why the local infrastructure planning and charges framework desperately needs reform

A1: The History

The demands on developers to fund and provide urban infrastructure to support new housing have soared over the past 20 years.

Until the 1980s most urban infrastructure was financed from local government rates or from State and Federal Government grants, with charges limited to connection of services such as water and sewerage and basic infrastructure internal to a development. Developer infrastructure charges commenced in Queensland after cuts to local government grants. In 1991 the UDIA (Qld) was concerned that headworks charges for dwellings (as they were then known) had reached as high as $6,000 in some areas (approximately $10,750 in today's money). Concern was expressed that councils had started including in headworks charges the cost of roadworks that extended beyond adjacent streets to include remote works such as culverts and bridges. Today not only are infrastructure charges and conditions being imposed to cover the cost of a wide range of economic infrastructure (including roadwork costs beyond adjacent streets) but they are also used to fund social infrastructure such as parks, playgrounds, sporting facilities, public transport, and land for youth centres, libraries and swimming pools. In addition, the required standard of design and build quality for this infrastructure keeps rising. As the system has evolved and charges increased, the predictability of charges has eroded, further impacting on the viability and affordability of developments.

A2: The dollars

In 2011, the Productivity Commission reported that in 2009-10, Brisbane had the highest infrastructure charges of any Australian capital city for infill development ($27,000) and the second highest for greenfield development ($27,000).[1] The Productivity Commission also found that developers in Queensland face the highest charge as a percentage of overall development costs with that percentage ranging from between 1 per cent and 25 per cent in Queensland compared to between 1 per cent and 9.5 per cent in New South Wales and between 1 per cent and 3 per cent in Victoria. The Productivity Commission report also notes that between 1995 and 2006 infrastructure charges in Brisbane increased in real terms by over 100 per cent.

The surge in infrastructure charges over the last twenty years gives rise to considerable inter-generational inequity. Those who bought land in the early 1990s paid little in the way of infrastructure charges and have enjoyed considerable capital gains. Those who buy in 2013 pay high charges and have little prospect of achieving the same level of capital gains as the previous generation.
Since the 2011 Productivity Commission study, infrastructure charging regimes across Australia have been in a state of flux and interstate comparisons are difficult. However, discussions with the UDIA in other jurisdictions and with developers who operate across State boundaries confirm that Queensland charges are high relative to other jurisdictions (for both residential and non-residential development).

The Institute notes that the level of the charges cap will be the subject of a subsequent review by the State Government.

To deliver a sufficient supply of affordable housing for Queenslanders, the Institute believes it is essential that that this review delivers lower, fairer, more certain and transparent charges. Too often, developments cannot feasibly absorb the current high charges and onerous conditions, harming development opportunities, home affordability, the economy, and jobs. This is particularly relevant in the regional areas of Queensland where there is a lower price point for new dwellings.

The Institute will be providing a detailed submission during this subsequent review period on capped charges that analyses the impact of infrastructure charges on development feasibility, affordability and the economy. This subsequent submission will propose a new set of capped charges for residential

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[1] See http://www.pc.gov.au/__data/assets/pdf_file/0003/108849/09-planning-chapter06.pdf

development with different maximum charges for greenfield and infill development as well as for SEQ and regional Queensland. The charges caps proposed will be based on the following tests:

- That they are competitive compared to other jurisdictions.
- They ensure that development is feasible.
- They reflect a fair sharing of the burden of infrastructure between new homebuyers and the community.
- They are less than the efficient cost of delivering non-gold plated essential infrastructure.

The Institute acknowledges that many of the proposals in the DP will deliver greater certainty to developers and in some cases reduce the cost burden of infrastructure on new home buyers. However, to deliver effective reform, both the 'elements' of the framework and the level of the charges cap must both be addressed. A significant proportion (estimated to be more than two-thirds) of development applications, particularly infill and smaller projects, are not subject to conditions requiring the construction of trunk infrastructure and are not required to deal with matters such as offsets and refunds. For this significant component of the development industry, of which many are Institute members, the level of the charge is key.

In conclusion, failure to deal with the level of charges will undermine the State's objective of growing the property and construction sector – one of the four pillars of the Queensland economy.

A2: The affordability impact

There is surprisingly little research in Australia on the degree of pass through of infrastructure charges onto housing prices and consequently the affordability of housing. The greatest body of empirical evidence originates from North America (Bryant and Eves, 2011).[2] Bryant and Eves (2011), in a review of the literature on infrastructure charges (or impact fees as they are known in North America) over the last decade, concludes that for every $1 increase in impact fees, new housing prices increase by $1.50 - $1.70. That is, there is an 'over-shifting' of the charges into house prices. Over-shifting occurs for a number of reasons in particular due to developers seeking compensation for the additional risk taken and return on costs (including funding costs). The weight of evidence of pass-through is so strong that the literature now largely assumes it as given that impact fees increase the price of new housing in the long run. In Australia, a 2012 report from the Allen Consulting Group examined the impact of infrastructure charges on new housing (among other taxes and charges).[3] They found, consistent with the international evidence, that there is 'over-shifting' of infrastructure charges. The Allen Consulting Group analysis found that charges are passed through $1:$1.20 into the price of new housing. The Allen Consulting Group further estimated that those funding a new home purchase with a mortgage would pay an extra $2310 in mortgage repayments per annum for a new home in Queensland as a consequence of infrastructure charges.

Using the international evidence of a pass-through of $1:$1.60, a standard charge of $27,000 in Brisbane for a three bedroom home would inflate the sale price of that home by $43,200. Assuming a $1:$1.20 pass-through from the single Australian study identified, a standard charge of $27,000 in Brisbane for a three bedroom home would inflate sale prices of that home by $32,400.

The following table and chart details the average infrastructure charge and median price of land across a number of Queensland high growth councils. Assuming (conservatively) a $1:$1 pass-through of infrastructure charges, the table shows that in 2012 charges represented between 9% (Brisbane) and as much as 19.3% (Fraser Coast) of the median land price in Queensland high growth councils. This data demonstrates that existing infrastructure charges play a significant role in the affordability of developed land and new housing – particular outside SEQ.

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[2] Bryant and Eves. 2012. Infrastructure charges and increases to new house prices : a preliminary analysis of the US empirical models. Available: http://eprints.qut.edu.au/48554/1/FinalPRRES2012_Paper.pdf

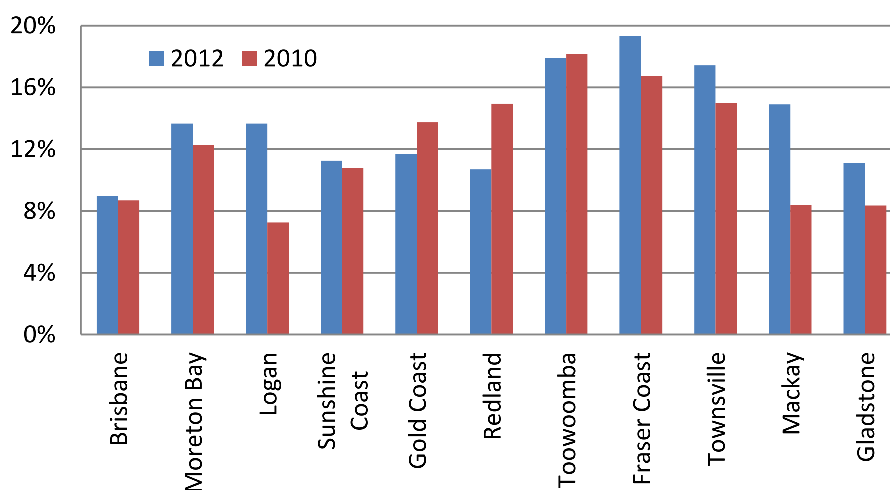
[3] *Allen Consulting Group 'Taxes and Charges and New Homes', 2012*

Table 1: Infrastructure charges as a percentage of median land prices

LGA	Year to June 2012			Year to Jun 2010		
	Adopted Infrastructure Charge (b)	Median land price (a)	Charges as a percentage of the land price	Median Infrastructure Charge (c)	Median land price (a)	Charges as a percentage of the land price
Brisbane	$26,000	$290,000	**9.0%**	$25,198	$290,000	**8.7%**
Moreton Bay	$28,000	$205,000	**13.7%**	$25,000	$203,900	**12.3%**
Logan	$28,000	$205,000	**13.7%**	$15,224	$209,900	**7.3%**
Ipswich	$25,000	$177,900	**14.1%**	$21,071	$177,000	**11.9%**
Sunshine Coast	$27,000	$240,000	**11.3%**	$26,929	$250,000	**10.8%**
Gold Coast	$27,000	$231,000	**11.7%**	$32,966	$240,000	**13.7%**
Redland	$28,000	$262,000	**10.7%**	$40,319	$270,000	**14.9%**
Toowoomba	$25,500	$142,500	**17.9%**	$23,624	$130,000	**18.2%**
Fraser Coast	$28,000	$145,000	**19.3%**	$25,944	$155,000	**16.7%**
Cairns	NA	$160,000	**NA**	$23,941	$165,000	**14.5%**
Townsville	$28,000	$160,750	**17.4%**	$24,127	$161,000	**15.0%**
Mackay	$28,000	$188,000	**14.9%**	$15,086	$180,000	**8.4%**
Gladstone	$28,000	$252,000	**11.1%**	$15,046	$180,000	**8.4%**

Sources: (a) OESR, (b) Council websites – adopted or average charge for 3+ bdr dwelling, (c) AECGroup (2009) *Benchmarking of Infrastructure Charges* - median charge for low density residential block

Chart 1: Infrastructure charges as a percentage of median land prices



The tables and chart above also demonstrates that the move in 2011 towards a standard charges regime resulted in many losers and only a few winners. Notably Gold Coast and Redlands saw their average charges decline whilst Gladstone, Mackay and Logan saw charges almost double. Encouragingly some councils have recently introduced discounts and incentives in an acknowledgement that their standard charges are holding back development and local economic activity. For example, Gold Coast has a Kick Start initiative offering a short-term infrastructure charges holiday on particular infrastructure networks. The industry welcomes these local initiatives; however it does not dilute the need for fundamental reform to the charging framework.

Infrastructure charges when combined with all other taxes and charges levied at each level of government (including indirect costs associated with planning delays and restrictive zoning practices) amounts to a staggering 36 per cent of a typical house and land package in Brisbane.[4] The graphic below also serves to highlight the significant cumulative impact of various *direct* taxes, fees and charges on the final price of a house and land package.

A3: Local Government Financial Sustainability

Financial sustainability in local government is referred to frequently in the DP. Councils regularly claim that there is a large funding gap between developer contributions and outlays on trunk infrastructure. To date, however, the discussion around financial sustainability has been from a very narrow point of view being the difference between upfront charges collected by local government and upfront outlays on infrastructure. The Institute believes that rigorous independent analysis is sorely needed that also:

- Takes into account the present value of future revenue flows (i.e. increased rates base) as well as future costs resulting from development.
- Takes into account the economies of scale in local government service delivery that may accrue from increased density and rates base.
- Interrogates whether the actual expenditure by local government on trunk infrastructure represents efficient and necessary expenditure.

In addition, we believe that any analysis of financial sustainability should also attempt to quantify the revenue benefits that accrue to State Government from development in the form of stamp duty and other taxes.

[4] See http://www.thecie.com.au/news.asp?nID=83

The Institute recommends that Queensland Treasury undertake this detailed analysis as part of the review of the capped charges that will occur over the remainder of the year.

A simple reading of local government financial statistics over recent years reveals that council's rates revenue has failed to keep up with recurrent costs. Recurrent costs have been growing due to both increases in underlying council costs combined with the increased scope and standards of council services delivered to the community. Rates are a stable and efficient form of revenue, however Queensland councils appear to have taken the politically easy (but economically damaging) route of shifting away from rates as a source of funding to other less efficient taxes and charges including infrastructure charges.

Despite the increases in infrastructure charges over time, an analysis of council annual reports and other public documents reveals that charges collected typically equate to between just 1 per cent and 5 per cent of a council's total annual expenditure. The Institute is therefore of the view that it is misleading to claim that a reduced charges cap would threaten the sustainability of local government. The Institute believes that a rigorous and holistic analysis of the type proposed to be undertaken by Queensland Treasury would further highlight the weakness in drawing a link between infrastructure charges and the financial sustainability of local government.

A4 – Transparency and Accountability

A disappointing omission from the DP is a detailed discussion of the principle of 'transparency and accountability'. The Council of Australian Governments (COAG) Housing Supply and Affordability Reform (HASR) report[5] identifies as one of the overarching principles for an infrastructure charging framework that "charging regimes should be supported by publicly available information on the infrastructure subject to charges, the methodology used to determine the charges and the expenditure of funds". At present in Queensland there lacks transparency regarding:

- the total quantum of charges collected including the value of infrastructure works constructed by developers and donated to council, and
- where and on what the infrastructure charges that have been collected have been expended.

The Institute recommends that councils be required to audit and report annually on the collection and expenditure of infrastructure contributions. In addition, all infrastructure delivered as a consequence of conditions should be reported as well as a public register of Infrastructure Agreements (IAs) kept.

Councils regularly claim to be significantly out of pocket with regards to the difference between charges collected and funds expended. Conversely, developers are sceptical that charges collected are in fact being allocated to the infrastructure on which those charges are based. Transparency will assist in building trust between all parties and the information will also allow for more informed debate and assist in the development of policy moving forward.

[5] See http://www.coag.gov.au/sites/default/files/Final%20Report%20-%20Housing%20Supply%20and%20Affordability%20Reform.pdf

PART B: Have your say

B1 – Infrastructure Scope

The UDIA (Qld) supports Option 2 on page 18 of the DP subject to the comments below.

Addressing the quality, scope and standards of the infrastructure required to be delivered and funded upfront is the key to delivering lower charges whilst minimising financial impacts on local government. The reform options relating to infrastructure scope in the DP are therefore considered some of the most important.

The Institute supports the important funding principle outlined in the COAG HASR report namely that -

"Where infrastructure services a number of developments, financing of major (trunk/shared) and social infrastructure should occur through general revenue sources (such as rates or taxes or regular utility charges) in situations:

- In which it is extremely difficult or not possible to accurately apportion the costs because the benefits of the infrastructure are widely distributed; and/or
- In which direct user charges can be applied."

In addition to this principle, in the interests of efficiency and equity, charges should be limited to those items that are truly required for the development to occur. New home buyers should not be required to pay for infrastructure that delivers benefits to the wider community (beyond what is required for the development to occur) otherwise there will be considerable inequity as a result; due to existing and future residents benefiting from this infrastructure without paying for it.

Based on these principles, the Institute has the following specific remarks regarding the list of items in the essential infrastructure table in Appendix 4:

a) The Institute supports the exclusion of higher order roads from the list as higher order roads would fall under point 1 in the COAG funding principle test outlined above.
b) The Institute supports the exclusion of park embellishments from the list as these items could be regarded as 'nice to haves' – that is - they are not essential for development to occur. Further, major parks with good quality embellishments tend to attract users from outside the local area and therefore, as benefits are likely to be shared by the wider community, they should be funded through general revenue sources (see point 1 of the COAG funding principle test).
c) The Institute supports relaxing stormwater requirements. The status quo requiring both on-site non-worsening and then also a payment of a charge for off-site treatment is a clear case of 'double dipping'. The Institute notes, however, that there needs to be some flexibility in dealing with stormwater and a one sizes fits all system must be avoided. In many circumstances, on-site treatment is wasteful and unable to be implemented due to site constraints and an area wide approach would offer greater efficiencies. The policy needs to cater for both circumstances – apply an on-site treatment condition OR pay a standard charge for external works. This should be at the applicant's discretion.
d) The Institute supports removing bikeways and pedestrian paths outside of a road corridor from the essential infrastructure list as these are both 'nice to haves' and would be captured by point 1 of the COAG funding principle text.
e) The Institute supports imposing a limit on charges and conditions for parkland. Whilst 2 hectares per 1,000 population may fall below what is being required to be delivered in many recent major greenfield developments it is, nonetheless, excessive in our view. For example, for a typical new subdivision with an average 400m2 lot size and 2.6 people per household, the proposed standard would result in 11.5 per cent of the development site being provided as parkland. This is in excess of the old 'rule of thumb' that 10 per cent of a development site represents an adequate amount of parkland. The Institute therefore recommends that the threshold be set at 1.75 hectares of land per 1,000 population and that it be made clear that this in fact represents a maximum and not a standard allocation.

The essential infrastructure list must be considered in the context of section 5.2 of the DP with the clear determination of what is and what is not trunk infrastructure. The Institute submits that each of the essential infrastructure items should be defined with a threshold limit of trunk infrastructure as a starting point for determining what trunk infrastructure is. Two sets of threshold limits could be developed – for example – one for SEQ and major regional cities and another for the rest of Queensland.

It has been argued by some stakeholders that by narrowing the list of infrastructure that can be charged or conditioned for, developers who wish to build things that go above and beyond this list will not be able to because councils won't be willing to accept ownership of those assets (i.e. local parks). The Institute does not accept that this reaction by councils would be justified. Developers who want to go above and beyond would only do so if it increases the value and marketability of their development. This value and increased housing supply will deliver benefits to council in the form of increased future rates. It therefore seems illogical as to why a council would refuse to take on an asset, paid for by someone else, the existence of which should deliver increased revenue for council into the future.

Trunk Infrastructure beyond the essential infrastructure list – parks

Land for parks and community purposes (Reform Option section 5.1.3) makes it clear that the essential infrastructure list is not to exclude an IA arrangement (in respect of non-essential infrastructure).

In the case of parks this would leave open the option of addressing embellishments (as non-essential infrastructure). The DP references several issues (page 19) including added cost to local government, diminished standards or non-provision of amenities, and the requirement to find alternative revenue sources for enhancements. In this context, it should be considered that developers will not ignore the market realities and will find alternative ways for enhancement to occur if there is a correlation to improved feasibility (through market demand and pricing impacts).

Those alternatives should not be limited by the reform framework itself. For example, issues may arise as to a council's willingness (as trustee of the land, as required by SPA) to accept and manage further amenities on already dedicated land under an agreement with an applicant or otherwise. If land is dedicated and to be held in trust, then generally the trustee will have the power to manage the land (and improvements on it) consistent with the purpose of the original grant. However, if the dedication (and trust) is for the purpose of holding the land in an unembellished state (i.e. the essential infrastructure list criteria) it may not be consistent with that grant for the council as trustee to accept additional facilities and maintenance responsibility even by agreement. The scope for essential parks / community purpose land as essential infrastructure must not therefore preclude the establishment of enhancements on dedicated land by agreement. This should also extend to allowing for agreements with applicants or other legal entities – such as bodies corporate established under the BCCMA managing scheme land that has the benefit of dedicated open space and may contribute to a higher standard of maintenance and management.

Community purpose infrastructure like parks must be held on trust by council under SPA where the land is supplied as a substitute for payment of a charge or to meet a condition. There is generally no contemplation (although an IA may propose it) that land that might satisfy the parks contribution requirement will be retained in an ownership structure other than council as trustee.

There are a number of ways in which land that serves a community purpose may be provided as part of a development without it being dedicated. The most obvious way is to have park or similar areas created as common property under a CTS structure treated as meeting a requirement to give park or open space areas. In a town centre or mixed use development, an area of open space / public facilities may be retained on title and use and access rights governed by a BMS or other arrangements, including to anticipate public access. For larger developments this is an option as those developments typically allow public access to common areas when the development is of significant scale. It might be argued that common property is private and not public land and this does not meet the requirement for a "community" purpose. That however ignores the potential scope for use of CTS and other tenure structures. A CTS structure may be created over significant areas and include or relate to parkland areas. Using common property in this way would also allow for establishment of facilities and amenities

with a transfer of ongoing management to a legal entity other than council. In an appropriate scenario public utility easements may also be used to secure access.

Consideration should nonetheless be given to amending the BCCMA (and development of a master scheme CTS structure under the BCCMA should also be advanced in this context) to empower a body corporate to allow public access to land under its management or to enter into agreements with a local government as to upkeep of relevant amenities in adjacent open space areas. Kelvin Grove Urban Village adopted such a model and is an example of a CTS structure on a broad scale that mixes dedicated parks with lots in a dispersed structure of scheme and non-scheme land – they appear totally integrated. This allowed long term maintenance to be secured at a standard higher than council may have otherwise been willing to provide.

It should not always be necessary to mandate public access in any event where the creation of facilities in a scheme provides significant amenity to the owners in that scheme or across a layered arrangement of schemes over a wide area. There are cost issues to be addressed in utilising a CTS or other tenure structure in this way, including in relation to liability and insurance obligations and ongoing costs and market impact. However, developers should have the opportunity to consider and structure these arrangements if they see a benefit in doing so.

Other measures can be used to deal with potential issues:

- If common property is deemed to satisfy park contributions there may be a rate offset to scheme owners in acknowledgment of that contribution and the assumption of maintenance responsibilities.
- A specific statutory specification of liability could be made to protect owners from claims from members of the public who have access, in the same way liability is assigned for public utility easements to the government entity taking the benefit of the easement. Such a measure would probably be necessary to deal with risk issues and insurance impacts. On the flip side there would need to be a balancing of maintenance cost contributions to reflect the balance between resident (community) use and third party (public) use of such facilities – this would provide flexibility to differentiate between particular development scenarios and scales – in some cases no 'owner' contributions to facilities may be a fair trade off and in others some contribution should be made by owners and the local government to maintenance costs.

If the scope of community purpose land is reduced (in terms of embellishment etc.) it is also likely that the use of alternative measures, in the form of special rates or benefitted area rates, will come into greater focus as a way of financing the long term costs of maintaining a higher standard of infrastructure. In that context, perceptions of the uncertainty of moneys raised being applied to the direct costs of the relevant infrastructure must be addressed. The relevant provisions in applicable legislation should be reviewed in this light and amended if necessary to ensure transparency and accountability in the application of funds raised through those measures.

Gold Plating

Not only does there need to be close attention paid to the scope of infrastructure, but there is a clear need to look at the standards of the infrastructure being delivered. It is the view of the Institute that the infrastructure developers are being asked to construct or pay for is frequently over-specified or 'gold-plated' resulting in overcharging or onerous conditions.

Over time councils have increasingly over-specified the standard required and specified a desirable infrastructure standard that far exceeds the necessary / essential, fit for purpose performance requirements. This significantly contributes to the claims by councils that they cannot recover the costs of infrastructure. The maintenance costs are also increased due to the higher standards being required.

A current example of excessive and growing infrastructure standards can be found in the new draft Brisbane City Plan. The table below summarises and offers comment on some of the new 'road corridor standards' in the draft Brisbane City Plan.

Item	BCC Guidelines	Draft City Plan	Comment
Local road Type B	Nominal 3.7 x 10^4 ESA with 25mm asphalt thickness	Up to 1.5 x 10^5 ESA with 50mm asphalt thickness	Traffic loadings have been increased for local roads. The traffic loading in table 3.5.5.1.1A specifying minimum thicknesses does not appear to match the minimum design traffic loadings in table 3.5.3A which refers to the same functional road classes. This could be clarified by ensuring that Table 3.5.5.1.1A is headed with the correct functional road classes. The requirements of Table 3.5.5.1.1A results in increased road excavation and increased asphalt thickness by 25mm from the subdivision guidelines. This would double the cost for asphalt to a development as the asphalt volume is doubled.
Neighbourhood Road Type C	Nominal 1.5 x 10^5 ESA with minimum 25mm asphalt thickness	Up to 9 x 10^5 ESA (without bus service) with 50mm asphalt thickness	Traffic loadings have been increased for neighbourhood roads. The traffic loading in table 3.5.5.1.1A specifying minimum thicknesses does not appear to match the minimum design traffic loadings in table 3.5.3A which refers to the same functional road classes. This could be clarified by ensuring that Table 3.5.5.1.1A is headed with the correct functional road classes. The requirements of Table 3.5.5.1.1A results in increased road excavation and increased asphalt thickness by 25mm from the subdivision guidelines. This would double the cost for asphalt to a development as the asphalt volume is doubled.
Heavy Vehicle Road Type D	Min. 7.5 x 10^5 ESA with 50mm asphalt thickness and 125mm base class 1	Full depth Asphalt required for HV such as buses (granular pavement no longer accepted)	The classification has been increased and neighbourhood roads with bus services are now classified as Roads subject to heavy traffic loading which falls into the same category as freight roads (Section 3.5.5.2 of the *Draft City Plan)*. This is excessive and will result in significant increases in construction costs in the order of 100% for full depth asphalt when compared to granular flexible pavement. This would increase even more in the event that poor material is encountered on-site.
On-verge bicycle paths	2.5-3.0m wide (Section 11.3)	3-3.5m wide (3.6.3.3)	The bike lanes have increased and there is a concern that there is no longer sufficient verge to accommodate the cycleway. It is noted that this would result in reduced verges which would cause conflicts with services or the more likely result being an increase in road reserve which would result in loss of developable land. This could potentially cause conflicts with the standard road width plans to be adopted in the guidelines. The same issue may apply to on-road cycle lanes.

Another recent example of excessive and onerous standards can be found in the Toowoomba Regional Council scheme with regards to road widths. Development industry concerns are not just limited to councils, but also include water authorities. For example, previously, sewer pump stations were designed to cater for 3.5 x peak Wet Weather Flow. Now the standard is 5 x Peak Wet Weather Flow. This increases the well size, the pump size, the electrical and mechanical componentry and the running costs. A pump station that would previously cost $400k would now cost of the order $650-700k.

Standard creep is rife and is imposing an unnecessary and burdensome cost onto the people that can least afford it – first home buyers. Further examples of gold plating are provided in Appendix C of this submission.

Mechanisms need to be put in place to ensure adequate, consistent and affordable design and service standards exist state-wide. The Institute's concerns relating to Gold Plating would be effectively dealt with if a low capped charge were in place combined with mandatory requirements for full offsets and refunds. A capped charge combined with mandatory offsets and refunds would ensure that the cost burden associated with gold plating would fall on the council (and therefore ratepayers). Councils would then have a strong motivation to interrogate their standards. However, in the event mandatory full offsets, cross-crediting and refunds are not a feature of the package of reforms, we would alternatively like to see a rigorous third party review of infrastructure plans be mandatory (see section B3 – infrastructure planning).

Transfer of land for parks and community purposes

Historically, parkland areas were marked 'PUL' on the survey plan (or 'PARK') and upon registration at the Titles Office, council received control of the land as trustee (there was no formal 'transfer' registered). This process involved no extra legal costs to developers and no stamp duty on the 'transfer'.

Currently under the SPA, if land is 'transferred to council in fee simple/freehold' it should refer to the transferee being 'Council as trustee'. This means council get the freehold title, but hold it for the trust's purpose.

Irrespective of if the transferee is council either in its own right or as trustee - stamp duty on the transfer is payable and the Duties Act requires transfer duty to be assessed on the higher of price paid or market value.

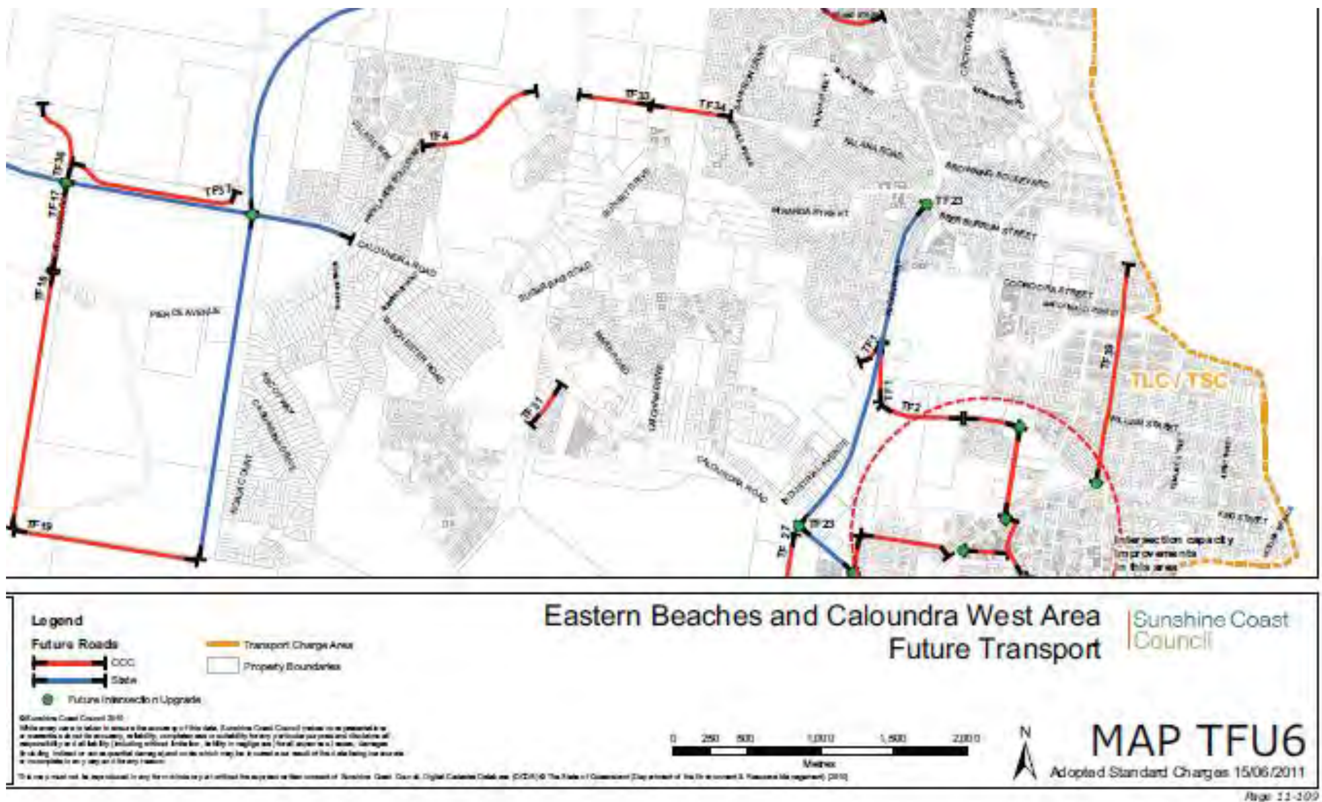
Even if freehold land is transferred to "Council as trustee" registered valuers consider the market value. Their reasoning is reference to advice they have from the Valuer-General's Office. Sometimes developers use real estate agents to produce nominal valuations (e.g. $1), but there is a risk that the real estate agent's valuation might be reviewed by OSR and the duty reassessed. This uncertainty is unfair and needs to be resolved. The Institute therefore recommends that the SPA and the Duties Act be amended to make it clear that land being transferred to councils for parks and community purposes does not give rise to stamp duty.

B2 – Identification of trunk and non-trunk infrastructure

The UDIA (Qld) supports option 2 on page 24 of the DP subject to the comments below.

The Institute regards the current definition of trunk infrastructure as inadequate. Presently councils are able to condition development approvals to provide infrastructure which is, in reality, trunk infrastructure (such as a link in an external road network) without being obliged to provide an offset for the cost of the work. This is a result of the current definition which states that the trunk infrastructure is infrastructure identified in the Priority Infrastructure Plan (PIP) and all other infrastructure is non-trunk infrastructure.

For example, the Institute is aware of numerous instances of areas of land zoned for development but where key infrastructure connections are not included in a PIP. This 'trickiness' with PIPs results in developers being conditioned for works and councils then refusing an offset against the standard infrastructure charge. For example, the map below has a missing piece of road between TF 4 and TF 33. The missing road is not included as trunk infrastructure and an offset would not be provided for constructing any part of it. Development can be conditioned to provide intersection upgrades and widening on the basis that the development will impact on the intersection or road. Leaving gaps in the network results in inequity because there is no offset for non-trunk infrastructure.



The Institute therefore supports the introduction of a test as suggested on page 26 of the DP. This reform option, combined with proposed reforms to offsetting arrangements, will provide greater certainty to developers over the availability of an offset. This in turn will improve feasibility of projects and deliver an increased supply of housing.

The Institute does recommend, however, amendments to the test as proposed on page 26. It is recommended that the test terminate after part 2 (i.e. delete test part 3). The Institute is concerned that there is a risk that the argument about whether infrastructure provides a 'trunk function' as proposed in part 3 has the potential to go around in circles with differing opinions between developers and councils. The Institute recommends that a standardised minimum specification for trunk infrastructure as proposed in section B1 above (with some regional variations if necessary) be developed and applied in part 2 of the trunk infrastructure test.

B3 – Infrastructure Planning

The UDIA (Qld) supports option 2 on page 29 of the DP subject to the comments below.

Even under a capped charges regime, the Institute believes that it is critical for councils to prepare infrastructure plans, as it enables the crediting and offsetting process to occur, as well as long term cost planning for councils.

It is also the Institute's position that the SPA mandate that a charge adopted by council under a capped charges regime not be allowed to be higher than the average efficient cost of delivering essential infrastructure in that local government area. For example, if infrastructure planning reveals that the average cost for a three bedroom dwelling across a local government area is $17,000, then the charge adopted by that council cannot be above this regardless of what the State determines as the maximum allowable charge.

With regards to the process for determining demand and charges, in 2004 when the government introduced infrastructure charging guidelines the Institute argued against basing the charges in part on existing infrastructure networks previously paid for through rates, subsidies or grants or where the infrastructure was funded and transferred to the council by a developer, as this constituted 'double dipping'. The Institute's position was that charging should be for future infrastructure only. This remains

the position of the Institute as the 'buy in' component for existing and paid for networks is a significant component of the charging structure which ought not to fall on new development.

The Institute notes that preparing detailed infrastructure plans can be administratively burdensome particularly for some smaller councils. The Institute therefore supports the reform proposal in the DP that sets a lower capped charge for those councils who choose not to undertake detailed infrastructure planning.

Third Party review process

With regards to a third-party review process for infrastructure plans, the Institute sees this as critical particularly in the unfortunate event that capped charges are not reduced and 100 per cent offsets and refunds are not made mandatory.

For the third party review process to add value it is essential that:

- The reviewers are appropriately qualified.
- The parameters of the third party review are clearly set (these must include a technical assessment).
- LGIPs are developed using standard inputs to enable meaningful comparison.

To tackle gold plating, it is essential that the third party undertakes a technical assessment of the underlying assumptions, costings and design standards. A technical assessment of this nature is sorely needed to provide a degree of transparency and confidence within the industry that both the infrastructure being planned for is in fact needed and that the cost estimates are reasonable.

B4 – Capped Charges

The Institute supports the retention of a capped charges regime as proposed in the DP.

The critical benefit of a capped regime (if it truly is a cap), is the long term certainty over the maximum amount a developer will pay. Increased certainty will deliver more feasible developments due to reduced risk. To have maximum effect, a known path of annual caps for at least six years into the future are required given the length of time that can occur between identifying a suitable development site for acquisition and the eventual levying of a charge.

The Institute will be providing a detailed supplementary submission during the proposed subsequent review period that analyses the impact of infrastructure charges on development feasibility, affordability and the economy. This supplementary submission will propose a new set of capped charges for residential development. The Institute supports retaining bedroom numbers as the basis for levying charges for residential uses. The charges caps proposed in our supplementary submission will be based on the following tests:

1. They are competitive compared to other jurisdictions.
2. They ensure that development is feasible.
3. They reflect a fair sharing of the burden of infrastructure between new homebuyers and the community.
4. They are less than the efficient cost of delivering non-gold plated essential infrastructure.

The Institute supports a three-tiered capped charges system, featuring lower charges as follows:

- A lower capped charge for greenfield development in SEQ.
- A substantially lower capped charge for infill development.
- A substantially lower capped charge for all development in areas outside SEQ.

Charges outside SEQ in particular need to be substantially reduced and set at a lower level than for SEQ. The main rationale for this is that a charge outside SEQ impacts project feasibilities to a greater

degree than the same dollar charge in SEQ due the lower price points in regional areas (on average) for new dwellings. In addition, modeling in the DP on page 21 suggests that the cost of delivering essential infrastructure is, on average, lower in the regions.

The Institute also supports setting an infill residential dwelling charge that is lower than for a greenfield dwelling. The SEQ Regional Plan in particular sets ambitious infill targets and setting a lower relative charge for infill would represent an effective policy lever in helping achieve those targets. The Institute is also of the view that lower infill dwelling caps are justified on the basis that infill is less costly in the long-run to local and state Government. Whilst modeling on page 21 of the DP would suggest that the cost of trunk infrastructure on average for infill is similar to greenfield, the cost to the State Government of providing public services (public transport etc) would be expected to be lower for infill development compared to greenfield. In addition, there are likely to be economies of scale in delivery of local government services associated with infill development to a greater extent than that associated with greenfield.

The Institute supports the assertion on page 38 of the DP that charging for retirement villages is currently excessive relative to the demand on infrastructure that they create. Similarly, due to the nature and occupants of manufactured homes, the Institute also recommends that charges for dwellings in a manufactured home park also be set below that for a traditional dwelling. The Institute is of the view that a capped charge of 50 per cent of final capped residential rate would be appropriate given the demand on infrastructure networks generated by manufactured homes and retirement villages.

The Institute also supports the introduction of a new charge category for residential dwellings of one bedroom or less. Feedback to the Institute from affordable housing providers indicates that the infrastructure demand generated by one bedroom dwellings and studios is close to half that generated by dwellings of three bedrooms or more (rather than the 71 per cent implied by the existing charge categories). In addition, a charge of $20,000 on a studio or one bedroom dwelling impacts significantly on feasibilities given the price points targeted for this form of development.

B5 – Planned Charges

***The Institute does not support the introduction of a planned charges regime as proposed in the DP*.**

Establishing a process to do away with capped charges introduces the kind of uncertainty and excessive charges that hurts development feasibility – the reason a capped charges framework was introduced in the first place. Given the often long period between a developer identifying a potentially suitable site for acquisition and the lodgment of a DA, developers will face the risk that in the years between identifying a site and lodging a DA that a council will have shifted from a capped charges regime to an uncapped planned charges regime. This risk will need to be taken into account in assessing a project's feasibility.

The proposal in the DP is also inherently unfair as a high degree of rigor is proposed to be applied as to the appropriateness of the level of charges under a 'planned charges' framework, however the same analysis and rigor is not being proposed with regards to the appropriateness of the level of the capped charges themselves. That is, there is no proposed mechanism to have charges reduced to a level below a charges cap in the event this meets the proposed development feasibility / financial sustainability test.

B6 – Conditions

The UDIA (Qld) supports option 2 on page 48 of the DP subject to the comments below.

The capping of infrastructure charges in 2011 was somewhat ineffective for a number of reasons. One of those reasons is due to the power for councils to add a condition to a DA that relates to trunk infrastructure within a Priority Infrastructure Area (PIA). The conditions often impose costs beyond any standard infrastructure charge that has been applied.

In fact the 2011 report of the Queensland Infrastructure Taskforce specifically warned that -

"a risk may arise if conditions attached to development approvals were used to offset any reduced revenues through the implementation of a standard charging regime."

Section 649 of the SPA allows conditions regarding availability, capacity or protection of identified trunk infrastructure networks. In addition, section 650 and 651 of SPA allows conditions to be imposed for the additional cost of trunk infrastructure for developments that are inconsistent with assumptions in PIPs about the type, scale, location and timing of development.

Since the 2011 reforms, members have increasingly reported instances of unfair and unreasonable conditions as well as inconsistency in the imposition of conditions (see Appendix A for some examples).

Industry concerns regarding conditioning are closely tied to the reform options dealt with in section B1, B2 and B7 of this submission. Implementing the Institute's preferred reform options in section B1, B2 and B7 of this submission, in addition to linking conditioning to the deemed trunk principle proposed on page 48 of the DP, will provide reduced costs and greater certainty that will in turn improve the feasibility of projects and deliver an increased supply of affordable housing.

B7 – Offsets and refunds

The UDIA (Qld) supports options 2 and 3 on page 50 and 51 of the DP subject to the comments below.

Presently there is no consistent approach to offsetting and developers have no certainty over whether an item of infrastructure can be offset and what value authorities will attach to that item.

More often than not, developers only receive a portion of their expenditure on trunk infrastructure as an offset. Take for example, a condition to provide roads at a cost to the developer of $10,000 per dwelling. Councils, however, may have determined that only $7,000 of the standard infrastructure charge is attributable to the roads network and offer an offset of just $7,000 per dwelling, leaving the additional $3,000 to be borne by the developer (and in turn the new home owner).

Some further examples of UDIA (Qld) member's experiences with offsets can be found in Appendix A. The Institute therefore strongly supports the reform proposals that will make offsets mandatory, including cross-crediting across infrastructure networks. This is essential to deliver greater certainty to developers that in turn will improve project feasibilities and deliver an increased supply of affordable housing.

With regards to the introduction of a standardised land valuation methodology, the Institute strongly supports this proposal. We note that the methodology should be based on a site's post-development zoning (i.e. assumes applicant could have developed the land), but should acknowledge site constraints including slope, mapped remnant vegetation and Q100 flooding.

Turning to refunds, **the Institute strongly recommends that the reform option 3 on page 51 be significantly amended**. Under current arrangements, refunds are provided on terms agreed between the proponent and councils and water distributor-retailers (water DRs). Councils and water DRs have, however, little incentive to reach agreement with an applicant for the payment of refunds. It is critical that developers have a refund schedule in place to satisfy its financiers and, in many cases, the refund and its timing can be the difference between a development being viable or not. What this means in practice is that 'first mover' developers are in fact bearing a burden greater than the demand the development places on an infrastructure network. This is due to the length of time and uncertainty around when a refund will be paid for infrastructure that benefits others. This is grossly inequitable for these new buyers to be carrying costs associated with infrastructure that benefits others. The costs of shared infrastructure should be funded by councils and water DRs as they can borrow at lower rates than developers and, as mentioned, it is inequitable for new home buyers to carry the funding cost and risk.

The Institute also recommends that the State Government introduce mandatory requirements that councils and water DRs provide refunds within five years of works being constructed. Additionally,

developers should be able to utilise any refunds that have yet to be paid at any time to offset a charge on another development in the same Local Government Area.

Not only are mandatory refunds critical for delivering certainty and avoiding inequities, they would indirectly deal with the gold plating issue raised previously in this submission. Some examples of the Institute's members experiences in dealing with refunds can be found in Appendix B.

The Institute notes that councils are strongly against mandatory refunds on the basis that they will expose the council to large unexpected liabilities and slow down DA process. The slowdown in DA processes that they claim will occur is because a DA officer, in giving an approval that may involve a refund, would effectively be committing council to future expenditure. Councils have pointed out that DA officers do not hold the appropriate delegated authority to commit council to such expenditure and a development permit would not be able to be provided until approval is obtained through council budgetary processes.

The Institute believes that the arguments that have been made against mandatory refunds by councils are weak for the following reasons:

- It seems strange that a DA officer can facilitate an offset (i.e. a reduction in revenue for council) but not make a decision that gives rise to expenditure. Both have the same effect on the budget bottom line. Councils simply need to alter their internal governance mechanisms to get around this problem.
- When refunds are paid, councils are in turn acquiring an asset. In most cases charges will eventually be collected and the asset will generate income.
- With infrastructure planning in place, councils should be able to predict with some accuracy the scale of refunds that may be required to be paid each year. The likelihood of refunds can simply appear as an expenditure line item over the forward estimates *(Note: The UDIA (Qld) proposal for refunds within five years would push any refund requirement beyond the forward estimates of a budget in any case)*.

In the event our proposal for mandatory refunds is not accepted by the State Government, the Institute would alternatively recommend that mandatory refunds be introduced for water DRs only. Water DRs are commercialised entities and many of the issues raised by councils with regards to delegations, internal governance issues and slowing down DAs are irrelevant in the context of water DRs. Additionally, the scope for cross-crediting where a water DR exists is less and therefore, all else being equal, refund situations would occur more frequently. For this reason, in the interests of increased developer certainty, a stronger case for refunding exists particular where a water DR is present.

B8 – Credits

The UDIA (Qld) supports option 2 on page 55 of the DP

In addition to allowing credits for existing uses rights as proposed on page 55, the Institute recommends that credits also be mandatory for previous payments, contributions or works undertaken as part of a staged development of which the site forms a subsequent stage. The Institute has been made aware that under the AICN regime, councils used strict wording of resolutions to deny credits to applicants of multistage approvals who had made land / works contributions under previous PSP charging regimes. Such an approach is unjust.

The Institute strongly supports councils keeping more detailed records of charges, credits and offsets. We suggest this could be included fairly simply on pdonline and /or a separate register of credits that can be searched by property. This avoids the cost of obtaining Town Planning Certificate searches.

B9 – Appeals and dispute resolution

The UDIA (Qld) supports a combination of options 2 and 3 as detailed on page 57 of the DP subject to the comments below.

Existing appeal rights do not enable mediated outcomes to be achieved. The Institute agrees with the widening of appeal rights and the introduction of a pre-lodgement mediation process (options 2 and 3). It is important to note that reform options two and three outlined in the DP would reduce the likelihood of disputes as a more consistent and transparent framework would be established. As mentioned in section B10 below, the Institute believes that due to the excessive timeframes that can often occur in executing IAs, that a process should be established whereby a party can elect to have compulsory mediation initiated if there has been a failure to execute an IA within three months of a development permit being issued.

B10 – Infrastructure agreements

The UDIA (Qld) supports option 2 on page 59 of the DP subject to the comments below.

IAs are an increasingly utilised tool documenting the relationship between an applicant, councils and other agencies such as water DRs in dealing with matters such as:

- the nature, extent and timing of provision of infrastructure (trunk or non-trunk).
- offsets
- payment and timing of refunds

The SPA has little to say about IAs. The variations in the way IAs are drafted, negotiated and executed have led to inconsistent outcomes across Queensland. For developers working across a range of councils, the result is a greater need to engage the legal profession to review IAs. The timeframe for finalising IAs also varies widely, with agreements often taking several years to complete. Even very simple IAs are taking months rather than weeks to complete (see examples in Appendix B). Needless to say, the level of uncertainty, and therefore costs, experienced by developers during the negotiation of IAs is high.

In particular, in the case of negotiating offsets and refunds to be included in IAs, lengthy delays occur and negotiations are made extraordinarily difficult and are costly in a legal sense, given that there are no mandatory mechanisms to manage the negotiation. This is particularly the case given that parties to the agreement often involve more than two entities (eg/ council, developer and water DR).

The process for drafting and executing IAs needs to be made more efficient, effective and certain.

The Institute notes that proposals in the DP around offsetting and cross-crediting should reduce the number of IAs required. Larger long term projects will continue, however, to utilise IAs and the Institute supports the proposals in option 2 of the DP as a means to increase certainty and reduce cost.

As detailed in Appendix B, given competing interests, IAs are in some instances taking several years to negotiate, which is unacceptable, particularly in the case where a development permit has been issued and trunk infrastructure identified. The Institute therefore recommends that a process be established whereby a party can elect to have a compulsory mediation process initiated if there has been a failure to execute an IA within three months of a development permit being issued. Further, it is recommended that the mediator be given powers to make binding decisions within a set period of time so as to avoid a protracted mediation process.

B11 – Deferred payments

The UDIA (Qld) supports option 2 on page 61 of the DP subject to the comments below

The UDIA (Qld) strongly supports the deferral of payment of infrastructure charges to the settlement of a lot. Moving to a system of deferred payments can materially reduce financing costs and improve housing affordability in Queensland.

We acknowledge that there are some difficulties to this approach, including payment security issues and high administration costs. We also acknowledge that in a minority of cases, developers who construct and deliver items of trunk infrastructure may in fact prefer paying a charge at plan sealing so that they can seek an offset or refund earlier.

Because there may be cases where deferred payment is not in the developers and new home buyers interests, the Institute recommends that a deferred payment option be voluntary. Rather than provide a council with the option of offering a deferred payment, the decision to ‘opt in’ to a deferred payment should instead be that of the developer as the developer will naturally assess the costs and benefits of doing so. The Institute therefore recommends amending SPA to make it mandatory for councils to allow infrastructure charges to be paid at settlement where the developer opts to do so. The Institute doubts that councils would voluntarily offer deferred payment as this option is already available to them, yet few have opted to offer it.

Further, the Institute supports mandating that plan sealing be earliest point at which infrastructure charges must be paid.

B12 – Alternative funding and financing

The Institute agrees with the statement in the DP on page 66 that alternative financing mechanism options should remain flexible, location specific and optional. The Institute believes that further detailed investigation into the use of alternative financing mechanisms needs to be undertaken so as to reduce the upfront cost burden on new home buyers. The Institute recommends that the State Government request, via COAG, the Productivity Commission to undertake an inquiry into alternative financing mechanisms for development infrastructure.

B13 – Resolutions and distributor-retailer board decisions

The Institute supports the introduction of a third party review process to ensure resolutions and board decisions comply with legislation.

B14 – Transitional arrangements

The Institute believes that in the interests of fairness and to avoid delaying development activity, developers with an existing approval or who lodge a DA prior to 1 July 2014 should be provided, through legislation, the ability to opt into the new arrangements as soon as those arrangements are legislated. We acknowledge that this may require the State Government to provide support and one off funding to councils.

<u>Offsets</u>

UDIA (Qld) members in Mackay have brought to our attention a transitional issue with regards to offsets negotiated through IAs that are based upon superseded contribution policies.

Prior to the Adopted Infrastructure Charges regime, offsets were often based upon the relevant infrastructure contribution policy in place at the time. For example, a developer might provide a park, with the land and works offset against the open space contribution policy over several stages.

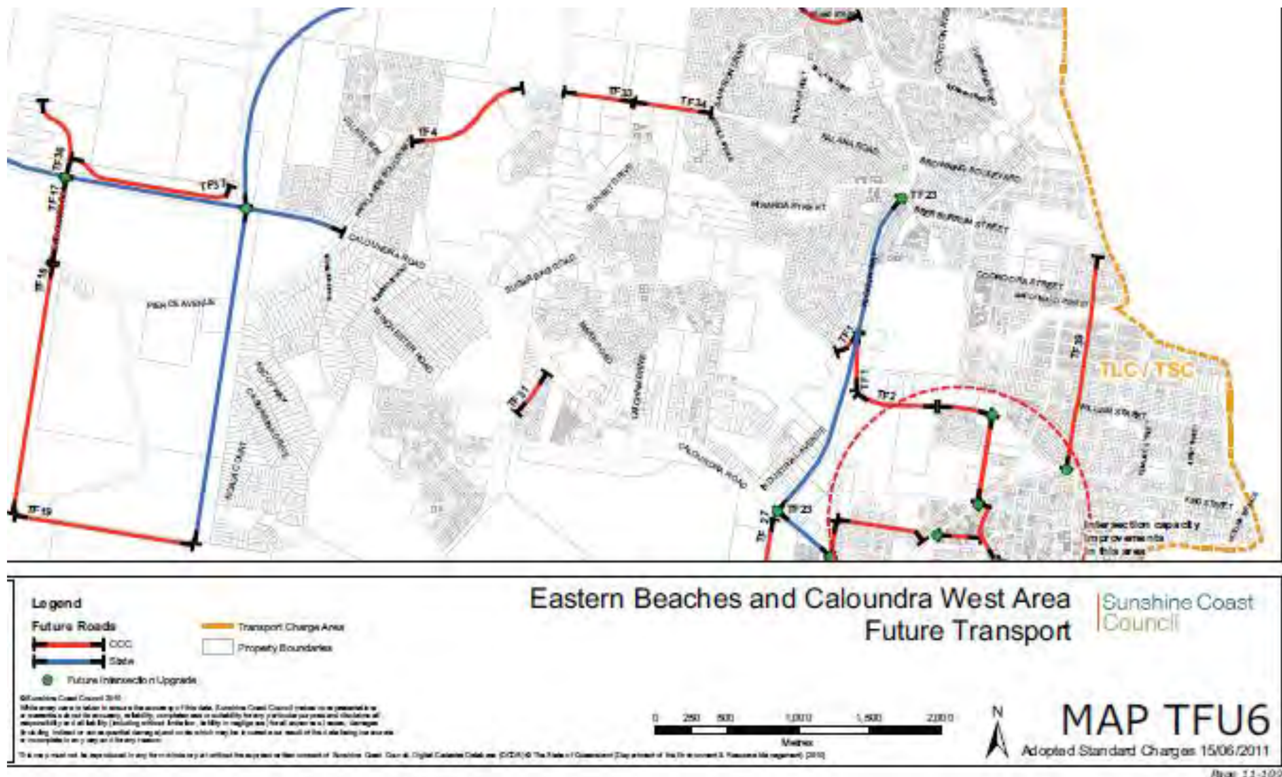
Since the introduction of the Adopted Infrastructure Charges Notice (AICN), there have been attempts to make developers fund certain trunk infrastructure without fair and reasonable offsets. As an example, in Mackay a development provided a significant amount of land for a road widening. In return, the IA provided for a full offset from road charges for the life of the development. The road is widened, but, being work already completed, it was not noted in the draft PIP/AICN. The former Mayor/CEO then verbally advised this developer they will not offset the contributed land against the AICN. This has still not been resolved and the developer in question is waiting on the outcome of the Infrastructure Charges review.

The Institute recommends that in implementing reforms that the State Government ensure that the new legislated requirement for full offsets apply to any works that are yet to be fully delivered at the time of the passing of the new legislation.

APPENDIX A: EXAMPLES – OFFSETS AND CONDITIONS

Example 1

The Institute is aware of numerous examples of areas of land zoned for development but key infrastructure connections are not included in the PIP. This ‘trickiness’ with PIPs results in developers being conditioned for works and councils then refusing an offset against the standard infrastructure charge. For example, the map below has a missing piece of road between TF 4 and TF 33. The missing road is not included as trunk infrastructure and offset would not be provided for constructing any part of it. Development can be conditioned to provide intersection upgrades and widening on the basis that the development will impact on the intersection or road. Leaving gaps in the network results in inequity because there is no offset for non-trunk infrastructure.



Example 2

The Institute has numerous examples across multiple councils where developers are conditioned to enter into an IA. One example is from Moreton Bay Regional Council where a condition was imposed on a staged residential development that required that an IA be entered into within 12 months of the approval or else the approval would lapse.

This type of condition is not appropriate as it virtually ‘blackmails’ developers into agreeing to whatever IA council puts forward.

Example 3

The following is an extract from a condition imposed by a council relating to trunk transport infrastructure:

“This condition is imposed under the relevant legislation on the basis that:

a) *Existing trunk infrastructure necessary to service the premises is not adequate and trunk infrastructure adequate to service the premises is identified in the priority infrastructure plan or an adopted infrastructure charges resolution of the local government; or*
b) *Trunk infrastructure to service the premises is necessary, but is not yet available and is identified in the priority infrastructure plan or an adopted infrastructure charges resolution of the local government; or*

c) *Trunk infrastructure identified in the priority infrastructure plan or an adopted infrastructure charges resolution of the local government is located on the premises"*

The wording of this condition is ambiguous and does not even identify which of the three possible justifications listed the council is relying on to impose the condition. Councils should be required to provide greater justification and some detailed analysis to support the condition.

Example 4

The following condition was imposed by Brisbane City Council:

> *"Transfer and surrender to the Crown as Park for Public Use the land indicated on the approved drawings and documents.*
>
> *Guideline: This condition is imposed to ensure that the relevant land is transferred and surrendered to the Crown as park for Public Use. An offset may be applicable for the parkland dedication, through an Infrastructure Agreement with Council."*

This condition illustrates the lack of certainty regarding whether an offset will be available leading to developers having to factor in the possibility of no offset being provided when undertaking feasibilities.

Example 5

The following standard offset condition was imposed by Brisbane City Council:

> *"62(a) Offset for Trunk Sewerage Infrastructure*
>
> *Comply with the provisions of Council's Adopted Infrastructure Charges Resolution (No. 1) 2011 in respect of an offset against an adopted infrastructure charge for the provision of trunk sewerage infrastructure required by this condition.*
>
> *TIMING: At the time the offset is claimed by the applicant"*

This condition is unsatisfactory as an adopted charges resolution can change at any time meaning there is no certainty as to whether there will be any offset available at all for the developer at the relevant time.

Example 6

A major legal firm reports seeing an increasing issue with regards to 'quarantining' of offsets to specific networks. For example take a development of 50 lots in Brisbane with standard charges of $1,300,000. If for instance, there was a trunk park within that development, that offset could generally be approximately $350,000. Under the Brisbane adopted charge however, only $240,000 of the $1,300,000 is allocated to the community purposes network. This results in an unusable or 'lost' offset of $110,000. The developer cannot use that offset against any other development because councils do not generally allow the offset to be 'carried forward' to any other development approval. The Council is this example had a 'windfall' of $110,000. A developer could apply for a refund however the experience of this legal firms clients is that the refunds are rarely paid.

Example 7

Two major staged developments in Mackay were required as part of an Agreement to provide millions of dollars of land and park works and offsets were to be made available. The parks were not noted on the draft PIP. After completing a significant amount of works, the developer was advised by Council that there will be no offset of the works against the standard infrastructure charge.

Example 8

It is common that sewerage conditions are not entirely recoverable from a standard charge. For example, a developer paid for works costing $2m but could only claim an offset of $10,000 per lot over 150 lots meaning the developer paid an additional $500,000 on top of the standard charge.

Example 9

A small developer was conditioned to undertake road works on poorly designed and poorly maintained roads adjacent (not internal) to the development. These roads were not considered trunk and no offset was provided. The development did not proceed as a result.

APPENDIX B: INFRASTRUCTURE AGREEMENTS AND REFUNDS - EXAMPLES

Example 1

Consultants and legal firms have reported an explosion in the use of IAs they are seen as the only mechanism by which parties can achieve some degree of certainty around charging, requirements and offsetting. IAs are no longer used for large long term projects but also for very small project. For example, a legal firm was recently involved in negotiating a single IA for a $25,000 bike path.

Example 2

Below are four instances in SEQ where IAs took far too long to execute and where developers had no certainty regarding offsets / refunds until after works had been completed:

- Offset agreement was started about 3 to 4 years before it was finalised. The offset amount was not agreed until after the infrastructure was in place even though the process started early in the planning application stage. The offset amount changed dramatically over time with Council trying to reduce the offset amount by over $600,000 after the infrastructure was in place. The developer finally got the correct amount agreed to but was not able to redeem the funds until the last stage (Stage 6) was completed even though the works were done at stage 1.
- An IA covering a multi-staged development took over 4 years to finalise and had multiple iterations with offset amounts that varied dramatically over time. Also the way in which offsets could be used changed over time during the negotiation process. In both cases the agreements were only concluded after several stages had been completed which made them partially retrospective in nature.
- 10 months to conclude a basic agreement that was only to establish charges.
- 6 months to provide a sewer IA which was a simple sewer line that needed construction.
- Instances where Draft IA's have been sent to Council and they have not responded in any manner for months on end with no available recourse. Subsequently any approval that requires an IA cannot be acted on at the time of issue and it can take as long as the currency period of the approval to negotiate the IA.
- Unity Water took over 12 months to prepare and finalise an IA even after an agreement in principle was reached.

Example 3

A developer has an unused offset of around $110,000 that was not able to be claimed against an adopted charge. The common experience for the clients of a major law firm is that the IA will need to be negotiated with legal costs being around $8,000 to $10,000. The value of the refund has now dropped to $100,000. In Brisbane City Council for example, the refund is then to be paid only from infrastructure charges collected for a period of five years. Nothing will be paid to the developer until:

- Monetary charges are paid in that network by other developers.
- Those charges are proportioned to that specific network only, and
- There is a further apportionment to the establishment cost of that specific trunk infrastructure item.

The likelihood of a refund is therefore a significant gamble for developers, because it is reliant on external factors over a five year period. There is a risk the developer may not even receive enough of a refund to cover the legal costs.

Example 4

Smaller councils are struggling with IAs. One of our members has been negotiating an IA in Maranoa through Council's solicitors in Brisbane. The developer has not been able to sit around a table and

negotiate the issues. The matter has been going on for 6 months that could have been dealt with in 1 month.

Example 5

A developer was conditioned as part of their development to construct external roads prior to completion of stage 1 works. The roadway was not the only way of access to the site, but was intended as a secondary access reducing traffic loads from other routes. The proposed roadworks were to service not only the developers land, but a number of other development sites whose construction would follow. The conditions required the developer and Council to enter into an IA.

The conditions for the roadway required a certain level of flood immunity to be achieved. During detailed design it was discovered that it would not be practical to meet this condition due to the surrounding connecting roads providing immunity much level than the level requested. Council verbally stated on a number of occasions that the conditioned requirement was unnecessary and agreed to a more practical approach.

Given this advice, the developer proceeded with detailed design and commenced discussions with council to enter into an IA. IA negotiations were slow and operational works approval was achieved. The developer decided to proceed with construction without final sign off of the IA.

Towards the end of construction, the developer was advised that council would not be entering into an IA for the roadway and that further, council had allowed other developers in the area to negotiate out of conditions requiring contributions for the roadway.

Example 6

An IA took 2 years to finalise with QUU despite the infrastructure to be completed being in accordance with their own preferred design.

Example 7

Councils are considered to be slow to finalise IAs. A legal firm recently had a client where an IA issued by a council for execution was returned executed by the client but it then took over 1 month for the council to sign the same (with absolutely no discussion / amendment during that time).

APPENDIX C: GOLD PLATING - EXAMPLES

Example 1

The following example is an example of both issues with offsets and gold plating.

Redland City Council required a developer to pay a charge for Transport Infrastructure with the creation of each new lot (approximately $3 million for 226 lots). There were no offsets for that payment as it represented external transport/traffic/road upgrade works.

On each stage approval, the Council also imposed conditions for external works including road widening work, associated drainage work, traffic signalisation, intersection upgrade works etc. This is a double dip given they were paying an external road improvement type charge and were then hit with DA conditions requiring external works to be done. Strategically, the developer deferred those works until the last stage but realising how much money Council had been collecting all the way along, decided to have a 'showdown' with Council about it all when the last stage was nearing completion. The Council ended up backing off requiring the works be completed when the developer pointed out exactly how much they had collected from the project (approx $3M) whereas the actual works outlined in the DA conditions were valued by an external consultant to be about $1M. In essence Council agreed to do the works themselves.

Perhaps most controversially, Council delivered the works themselves at a lower standard of service - they abandoned the traffic signalisation (and built a roundabout instead) and cut back on some of the drainage works that they originally imposed on the developers DA's. Essentially, this was an admission that the original demands were over-specified.

Example 2

Ergon changed its performance criteria in the Cairns area, reducing the maximum number of houses to be connected to a transformer from 88 to 57. On a 300 lot subdivision that has a cost impact of $700 per lot, not to mention the lost land opportunity costs as each transformer needs to sit on a 24sqm easement. With reducing household sizes and with developers reducing lot sizes, it is reasonable to assume demand is not increasing in new areas, and with smaller lot sizes, the voltage drop on long runs should be reducing because you are servicing the same number of houses over a shorter distance.

Example 3

In one of our member's projects there have been ongoing negotiations with Unitywater regarding the external sewer. The original design was to construct a pump station to service the sewer which has been tendered at approximately $510,000 including construction, design and supervision, resource entitlement etc. Unitywater then came back and requested that a gravity sewer be constructed. A gravity sewer system was fully designed as requested and fully tendered at a cost of approximately $1 million. The developer has been in negotiations with Unitywater to recoup the difference through an IA.

Unitywater are not in agreement to pay the difference even though the site could easily have been serviced through the pump station design. Negotiations and changing demands have now delayed the project well over a year.

Example 4

Requirements for small / medium sized developments to construct signalised intersections and gold plated road upgrades are a big issue. There is one development proposal with a desired 150 lots that has been asked to construct an intersection estimated to cost over $2.5 million (with offsets not fully available). A 'gold plated future design' is being required to be constructed - a section of a 4 lane road plus turn lanes, a signalised intersection, on road bike lanes, off road cycleway footpaths and land dedication at the frontage as part of their gold plated future design. Planning identifies the upgrade to the road is not planned for / required for over a decade. This comes at a huge cost and one which has stalled the project and it will not proceed in its current form.

Example 5

The land concerned is zoned as Industrial land, and adjoining lots are industrial, special purpose (airfield) and residential, with land opposite residential. There were known drainage issues with the road. On the north side of the road, there were 3 houses (lots) plus the proposed lot/s for subdivision with access to the street, and 5 houses plus one vacant lot (on 6 lots) with access to the street on the south side. The vacant lot is owned by Council and is dedicated as future access and car parking to the airfield. The lots on the corner at the intersection with the feeder / arterial road have actual access to the feeder road. Traffic is approximately 12 cars and Council rubbish vehicles in the dead end street. Upon lodging the subdivision application, Council placed as a condition, that the developer of the 2 new lots would have to design and construct the (whole of the) street / road (approximately 200m in length) to "industrial standards". This would require re-grading the existing road downwards, require a new water main, and kerb and channel to both sides of the road, plus a wearing course on top of the new 600mm industrial road base. Council also demanded the standard road contribution for the 2 lots on top of the new 200m of industrial grade road. Road traffic would possibly have increased road usage by 2 lots x 2 cars = 4 cars, taking it from 12 cars and a Council rubbish truck, to 16 cars and a Council rubbish truck. Cost estimate for this 200m of new road construction is of the order of $200,000. Profit from sale of the 2 lots at market rates may be $30,000 per lot or $60,000 total.

Normal subdivision practice has been to upgrade the road in front of the allotments that the existing street frontage affects, and pay the road contribution as a levee / infrastructure charge that would be able to be used / credited against the future 16 lots. A further 16 lots are planned in the small low impact industrial estate.

Example 8

Open space provision requirements are driven too much by quantity rather than quality. The result is that developers typically have to give up large areas of developable land– reducing yields and thus reducing affordability and increasing cost. The open space guidelines produced by the former ULDA demonstrate that there is a better way and went some way to providing a more qualitative design-based solution. Greater attention needs to be given to quality, dual use of conservation areas and open space as well as changing lifestyles.

Example 9

QUU priced for a sewer trunk main (contribution) in excess of $10m. Two consultants and two contractors priced the value at just over $2M. It took over 3 months to negotiate and bring QUU down to the consultants construction value.