State Development Infrastructure and Industry Committee

From: Brian Bailey [redacted]
Sent: Friday, 16 May 2014 4:00 PM
To: State Development Infrastructure and Industry Committee
Subject: FW: Submission - Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014
Attachments: Attachment.doc

The Research Director
State Development, Infrastructure and Industry Committee
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Dear Sir/Madam

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

Townsville City Council has actively participated with the state government in the infrastructure charging reform process, and now makes a submission concerning the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014 (the Bill). Council's position is guided by the recent preparation of a priority infrastructure plan (PIP), to be adopted soon with a new planning scheme, and is well informed about local industry and community aspirations, local trunk infrastructure user costs, and cost-efficient development locations.
The following main comments are made with regard to the draft:

- Council's should be supported and incentivised to prepare a planned charge, so that it can most effectively inform a robust capital works program for their respective organisations. This should be third party reviewed and agreed.

This is not to say that a capped charge cannot and should not be applied.
If a capped charge as proposed then applies, Council's who can transparently quantify the impact of the cap against their planned charge should be rewarded the difference through the fair value system or similar.
Inherent to this approach is promoting the financial sustainability of councils through best practice infrastructure planning and capital works planning.

- Council is about to adopt a new planning scheme which provides for many developments as self-assessable, improving their feasibility by removing the bureaucracy of planning approvals. Infrastructure charges were to be recovered by levying charges on the relevant privately certified building works, however the Bill now threatens to undermine this by restricting the levying of charges only where local government has given the development approval. (proposed S 635)

- The Bill would allow council to 'deem' trunk infrastructure but does not specify any guidelines, and yet the decision on such matters would be appealable. More certainty is required to reduce risk of exposure to Council in approving developments that could contain possible deemed infrastructure with consequent unplanned offset requirements

A review of the Bill which provides the background for the points made above is also enclosed. This representation is hereby submitted for consideration of the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014.

Yours sincerely

Stewart Pentland
Director, Planning and Development Services.

TO >> File
SENDER >> Priority Infrastructure Planning Officer
DATE >> 16 May 2014

SUBJECT >> **Attachment for submission – review of Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014**

The state government released the draft Sustainable Planning (Infrastructure Charges) Amendment Bill 2014 on 17 April 2014, seeking comments by Friday 16 May 2014. A review of the bill notes the following key changes and concerns under the reformed regime. All references are made to sections of the draft amended SPA:

1. Planning assumptions, PIA

A LGIP (local government infrastructure plan) will define the planning assumptions and PIA, amongst other things (s627, definitions).

A PIP can be taken to be a LGIP (s980), however, if there is no PIP/LGIP then there is no scope to consider planning assumptions, and the current PIA as set by the SPRP (which is consistent with the draft 1st edition PIP) remains in place until the 1 July 2016 (s981). This is an old PIA which presents development assessment issues in the urban fringes, but is not unmanageable in the immediate term.

There would be a conflict in the definition of the PIA (s627, definitions) and that proposed in the PIP of the new planning scheme. Specifically, the PIA definition would include 'non-urban' land, which seems to be at odds with the PIA drafted for the new planning scheme (which specifically excludes unsewered rural residential land, remote communities, and some highly specialised industrial and state government projects/lands).

2. DSS and trunk infrastructure

The LGIP would also define the DSS and trunk infrastructure (s627).

A PIP can be taken to be a LGIP (s980), however, if there is no PIP/LGIP two conflicting scenarios could occur:

(i) Under s976, up until 1 July 2016, trunk infrastructure would be every piece of infrastructure remote and not directly connected to the development

under assessment (s976). This is similar to the status quo for most infrastructure streams (i.e. only parks infrastructure has been defined for trunk under an adopted infrastructure charges resolution).

This presents a risk to developers that they might provide trunk type infrastructure in their development, but not be entitled to offsets/refunds. The current working practice by council has been to informally recognise a combination of PSP and draft 1st edition PIP plans for trunk infrastructure, however, it is not strictly supported by the SPA, and lacks the certainty of a resolution.

(ii) Under s977, up until 1 July 2016, council's existing adopted infrastructure charges resolution may continue to apply, or be amended, or a new resolution made to define DSS, establishment costs and trunk infrastructure.

It would seem that s976 should apply only in the default case where no effort has been made via a resolution to define DSS or trunk infrastructure.

3. Non-trunk to trunk conversion

An applicant would be able to apply to council to convert non-trunk infrastructure to trunk infrastructure (s658 - 660). No specific warrants are mandated, and this action appears to be solely at the discretion of council, although such a decision could be appealed.

It is foreseeable that, come time to deliver, some of the trunk infrastructure planned in the LGIP may not be feasible to provide, and hence conversion of non-trunk (i.e., not planned) to trunk might be warranted. This could be viewed simply as the planned trunk infrastructure being relocated or reconfigured elsewhere to deliver the requisite DSS.

It is also foreseeable that inconsistent development (e.g., urban growth outside the PIA), would want their connecting infrastructure etc to be recognised as trunk infrastructure in order to facilitate charge offsets or refunds. In such cases, it would be more appropriate for the 5 yearly LGIP review (s91A) to facilitate the conversion, thereby mitigating the risk of uncertain growth and commitments in the infrastructure planning/delivery 'pipeline'.

The Bill has missed an opportunity to empower a charges resolution to consistently and transparently manage the process of considering applications to convert non-trunk infrastructure to trunk infrastructure.

4. LGIP

The current draft PIP, when adopted and commenced with the new planning scheme, will be sufficient to function as the LGIP (s980).

A LGIP (local government infrastructure plan) will be required to be in place, and part of the planning scheme, by 1 July 2016 (s975). The LGIP will define the planning assumptions, DSS, PIA and trunk infrastructure.

Failure to do so would mean that, from that date and until a LGIP was in place, council could not make a charges resolution (i.e., set new charges) or impose conditions requiring the provision of trunk infrastructure, or additional trunk infrastructure costs.

A new LGIP (if a PIP does not exist at the time of the new regime commencing), would be required to be prepared in accordance with a relevant statutory guideline. Those details are not clear yet, but could require a third party review.

5. Charges Resolution

Local government would be empowered to make a charge resolution to set adopted charges applicable for development (s630), albeit the charges must be permitted by the SPRP and do not exceed the maximum adopted charge set by the SPRP (s631). This is similar to the current regime.

The charges resolution can set different charges for different parts of the local government area, and provide for automatic inflationary increases to the charges for when they are paid, commensurate with the 3 year moving average of the ABS Queensland Road and Bridge Construction Index (s631). This is an improvement to the current regime, which did not provide such a mechanism, but is similar to current practices which have made quarterly inflationary adjustments to the charges and at the time of payment.

The charges resolution must also set out the method of working out the cost of trunk infrastructure if it becomes the subject of an offset or refund. This would then formalise council's current practice of valuing infrastructure as set out in the policy for trunk infrastructure acquisition.

In the interim, until 1 July 2016, council's existing infrastructure charges resolution can apply to the extent it is consistent with the SPRP applicable (s977). To this end, it should be noted that council has not yet made any resolution that sets any adopted infrastructure charges. Rather, it has relied on the default provisions of the current regime which applies the lessor of the amount derived from the former planning scheme policy contributions, and the maximum set by the SPRP. This default provision has not continued into the proposed reformed regime. This places council at risk of not being able to levy charges under the reformed regime until such a resolution is made. Should a new resolution be made, it would likely introduce changes to the charging regime, and have continuity issues with the local industry. The Bill has missed an opportunity to provide for default infrastructure charging if no resolution has been made to set charges.

On the basis of a state government media statement (17.4.14), it would seem the state do not want to change the current SPRP caps.

6. Adopted Charges

Charges would only be levied where local government gives a development approval (s635). It is assumed this means where council has decided and issued the development approval. This would restrict the current ability for council to levy charges on privately certified building works, especially for development which is self-assessable or exempt under the planning scheme. In turn, this would erode the infrastructure funding system, or promote the return of higher levels of assessment to development to mitigate the funding loss.

Charges are determined on the basis of net increase in infrastructure demand, giving a credit for: (i) existing lawful uses, or: (ii) other development which could be lawfully carried out without the need for a further development permit (s636). The later criteria is too broadly defined. At best, it could add a further 5% or 50m2 of GFA to the credit value of particular land uses. At worst, a development could be given the benefit of hypothetical but highly unlikely uses. When practiced in the past, this proved to be a costly and administratively intense process. Furthermore, the inconsistency of this approach with the charges levied at subdivision stage has generated inequities in the charging and crediting cashflow. It would be far better to clarify the second criteria as 'self-assessable or exempt development uses on vacant land, commensurate with the charge levied for production of a new vacant lot'.

The combination of these two affects promotes the levy of charges at subdivision stage to recoup the cost of the highest self-assessable or exempt land uses. This is contrary to the principle of matching charges with demand, would result in over-recovery of charges, and adversely affect development cashflows.

The Bill would have done better to allow council to levy charges on privately certified building works, and to clarify that credits are only given for: (i) existing lawful uses and; (ii) for vacant land: nominal self-assessable or exempt uses, commensurate with the charge levied for creation of a vacant lot.

7. Infrastructure charges notices

Infrastructure charge notices would need to have clearer identification of any potential offsets/refunds due to trunk infrastructure being provided by the applicant (s637). This does not mean the amount in the charge the notice are reduced by a potential offset, but rather the nature of the trunk infrastructure and any ties to the relevant development approval need to be identified.

Infrastructure charge notices can be provisioned to allow the charges to be inflated by the three year moving average rate of the Roads and Bridge Construction Index. This would be subject to the relevant charges resolution also making such provisions. This is similar to the current practice at council, albeit not specifically provisioned by the SPA.

Infrastructure charge notices would be required to be accompanied by an 'information notice' stating the decision to give a charge notice, the reason for it, and what appeal provisions may apply. This is similar to information already conveyed on the current adopted infrastructure charges notices, and would be more efficiently administered by maintaining that practice rather than introducing more notices.

8. Offsets/refunds

Where trunk infrastructure has been provided by the applicant, the levied charge must be offset by the cost of the trunk infrastructure provided, and any refund is provided at a timing subject to 'terms agreed' with council (s649). This is consistent with the current practice of using the value of such infrastructure as part payment towards the infrastructure charge.

However, the reformed regime no longer restricts such offset towards the charge component of the same infrastructure stream. This increases the amount of

offsets and decreases the amount of refunds – arguably a marginal cashflow improvement for the developer in the general sense, but not always. This would adversely affect individual service provider cashflows, whereas it currently only affects that of the infrastructure being provided. In either case, the developer's entitlements are still maintained, yet there is a clear case for administrative efficiency (and better infrastructure funding flow) if the current arrangement is maintained.

9. Establishment cost

The establishment cost of infrastructure is defined, but is different for existing (council asset register value) and future infrastructure (estimates). There are a number of philosophical issues here, as the asset register valuations are not appropriate for network capital cost 'buy-in' purposes, and the difference with future network valuations becomes inequitable. It would require additional work to shore up any appeals about offset/refund values and additional trunk infrastructure costs imposed on development.

10. Charge break up

The new regime would allow the state to set the 'break up' of adopted charges, via the SPRP. It does this now for stormwater and non-stormwater categories, and could expand further, effectively setting a cap for each infrastructure stream. This could be problematic and inequitable in different areas of the state, and where different local governments have chosen to fund infrastructure streams differently to better manage the overall cap.

The new regime could expand the 'break up' to include the proportion of charge levied at different development stages. Potentially, this could lose meaning as the nexus between the development demand and charge would be eroded, and may not equitably accommodate all development sequence configurations.

On the basis of the state government media statement (17.4.14) it would seem there is no immediate intention to modify the current SPRP.

11. Infrastructure agreements

The new regime would clarify that infrastructure agreements can not be imposed by a condition of approval (s347). It also seeks that any approach to negotiate an agreement is carried out in good faith by either party (s671).