Sub 49

Unitywater

ABN: 89791717472

Ground Floor, 33 King Street
Caboolture QLD 4510
PO Box 953
Caboolture QLD 4510
www.unitywater.com

The Research Director
Transport, Local Government and
Infrastructure Committee
Parliament House
George Street
BRISBANE QLD 4000

25 November 2011

Sustainable Planning and Other Legislation Amendment Bill 2011

I am writing on behalf of Unitywater to make a submission about the Sustainable Planning and Other Legislation Amendment Bill 2011.

Unitywater is the Northern SEQ Distributor-Retailer Authority providing water and sewerage services to the Moreton Bay and Sunshine Coast Regional Council areas. As such Unitywater relies on the Sustainable Planning Act 2009 to carry out certain of its functions, including levying infrastructure charges. Unitywater also has an ongoing relationship with the Urban Land Development Authority in relation to the servicing of the Caloundra South Urban Development Area.

In perusing the Bill there are several clauses proposing amendments to the Sustainable Planning Act 2009 and the Urban Land Development Act 2007 that raise concerns for Unitywater. The details of our submission are outlined in the attached. Of these, clauses 129 and 123 are considered the most significant in the ways they deal with long term infrastructure funding rights and responsibilities in Urban Development Areas.

Thank you for the opportunity to make this submission. Unitywater would welcome the opportunity to discuss the matters raised in this submission. Please contact Graeme Ballard on 07 5431 8388 or graeme.ballard@unitywater.com to provide further information for the Committee's consideration.

Yours sincerely

G. Theo

George Theo
Chief Operating Officer
For Chief Executive Officer

Unitywater

Clause	Description	Submission
Urban Land Development Authority Act 2007 It is noted from the Explanatory Notes that consultation about the Urban Land Development Act amendments was limited to key Government departments.		
111	**Amendment of s 38 (Division 1 process applies)** Among other things the amendment proposes to insert new paragraphs (c) to (f) into s 38(2). These paragraphs propose reduced timeframes for the making of submissions about development scheme amendments and related matters.	It is considered that the current timeframes (i.e. those applying to the making of development schemes) should be retained and paragraphs (c) to (f) deleted from the clause. The reasons in support of this are: 1. No justification has been provided in the material supporting the Bill for the reductions proposed; 2. Development schemes are the principal policy instruments of the Authority and an amendment of a development scheme may involve significant policy changes that organisations, groups and individuals affected by the changes should have adequate time to consider and respond to; 3. The proposed timeframes are at odds with those applying to planning instrument amendments in the Sustainable Planning Act — e.g. the public consultation period for planning scheme amendments is at least 30 business days (SPA s 118); 4. The proposed public consultation period (i.e. 15 business days) is less than the 20 business day consultation period for UDA development applications requiring public notification (ULDA Act s 54(5)). The reduced timeframes in the Bill appear to be at odds with good public outcomes, particularly in view of the fact there are no third party appeal rights available under the Act and very restricted applicant appeal rights. The emphasis should be on ensuring development schemes and amendments are subject to high levels of public consultation to support the streamlining of development assessment under the Act; 5. Retention of the existing timeframes, because they relate to the amendment of policy settings, will not impose an unreasonable burden on the Authority or cause delays in the approval of development applications.
129	**Insertion of new pt 6A (Infrastructure agreements)** The amendments propose the insertion of a new part in Act to clarify the nature of infrastructure agreements entered into by the Urban Land development Authority and the fact that the	The proposed amendments highlight a significant flaw in the current Act relating to infrastructure agreements and the arrangements for deciding and assigning infrastructure funding responsibilities. It is considered the amendments should not proceed in their current form, and there should be a broader and more considered review of the way infrastructure is negotiated and funded in major growth Urban Development Areas (e.g. Caloundra South) to ensure the longer term infrastructure service providers are equal parties in the negotiation of agreements and the funding and supply of infrastructure in these areas generally. The reasons in support of this are: 1. The Urban Land Development Authority is the only entity with power under the Act to enter into infrastructure agreements and the amendments make clear that an agreement made by the ULDA transfers to a superseding public sector entity (e.g. Unitywater) when land ceases to be in an Urban Development Area;

Clause	Description	Submission
		2. The Act cross references to the Sustainable Planning Act to define what an infrastructure agreement under the ULDA Act is — i.e. a common law agreement that is binding on the parties and that prevails over development approvals and planning instruments to the extent of any inconsistencies between them — but does not ensure that agreements are matters freely entered into between the relevant parties. 3. Unitywater is supportive of the overall objectives of the Urban Land Development Authority, particularly in terms of the desire to seek innovative infrastructure solutions for UDAs. The issue is not with the policy intent; rather it is with the implementation mechanisms. The expansion of the role of the Urban Land Development Authority as planning authority and regulator for major growth areas like Caloundra South highlights deficiencies in the current legislative framework that are exacerbated by the proposed amendments. The development of the growth areas will extend over many years (up to 40 years in the case of the Caloundra South UDA) and decisions about binding service providers like Unitywater to the terms of infrastructure agreements for such long periods without the relevant service providers' specific agreement is considered inappropriate and imprudent.
123 & 121	**123. Amendment of s 76 (When approval lapses generally) and** **121. Replacement of s 70 (What approval authorises)** The amendments seek establish the types of development approvals able to be issued by the Authority and the currency of approvals.	The general thrust of the amendments is acknowledged. However, as with infrastructure agreements, it is considered the proposed amendments highlight a significant flaw in the current Act in relation to the arrangements for deciding and assigning infrastructure funding responsibilities over the longer term, particularly in major growth areas. It is considered the amendments should not proceed in their current form and there should be a broader and more considered review of the way infrastructure is negotiated and funded in major growth Urban Development Areas. The reasons in support of this are: 1. A development approval (preliminary approval or permit) may be used as an alternative to negotiating an infrastructure agreement about the supply and funding of infrastructure in an Urban development Area; 2. As with infrastructure agreements, service providers like Unitywater are not parties to the approvals issued by the Authority in the way concurrence agencies are under the Sustainable Planning Act. However, a UDA development approval may make commitments about infrastructure supply and funding that are binding on service providers over the very long term. The amendments to s 76 make clear that an overarching, high level development approval issued over a UDA will remain in place until all related approvals have been effected (i.e. in the case of Caloundra South this could be up to 40 years); 3. Unitywater is supportive of the overall objectives of the Urban Land Development Authority, particularly in terms of the desire to seek innovative infrastructure solutions for UDAs. The issue is not with the policy intent; rather it is with the implementation mechanisms. The expansion of the role of the Urban Land Development Authority as planning authority and regulator for major growth areas like Caloundra South highlights deficiencies in the current legislative framework that are exacerbated by the proposed

Clause	Description	Submission
		amendments. The proposed amendments provide scope for long term infrastructure decisions to be made without the relevant service providers' specific involvement or agreement. This is considered inappropriate and imprudent.
Sustainable Planning Act 2009		
87	**Amendment of s 648A (Meaning of adopted infrastructure charge)** The amendment proposes a change to the meaning of pre-SPRP amount to make specific reference to distributor-retailers. This is supported as is the proposed back dating of the commencement of the clause to 6 June 2011 when the legislation establishing the adopted charges regime commenced. However, it is considered that for clarity, complementary amendments are also required to the meaning of standard amount in s 755A.	The execution of the adopted infrastructure charges regime in legislation is complex. This is particularly the case for the period immediately after the regime commenced into operation on 1 July 2011 and before a distributor-retailer's Board adopts its own charges under s 755KA. In these situations the distributor-retailer must levy the distributor-retailer's "standard amount"(s 755KB(2)). There are situations where distributor-retailers, including Unitywater, have been required to levy the standard amount. In the particular circumstances applying to Unitywater, the applicable standard amount is the amount described in paragraph (a) of the definition of the term in s 755A, the meaning of which is unclear. It is considered this meaning should be clarified as part of these amendments. It is considered that paragraph (a) should be deleted and existing paragraph (b) should apply in all circumstances the standard amount is to be levied by a distributor-retailer. As with the change to the definition of pre-SPRP amount, it is considered any amendment of "standard amount" should also be back dated to the 6 June 2011 commencement date. Charges already levied under these provisions will not fall due for payment for four or more years. Accordingly, it is considered important to clarify the requirements well before the due date.
88-91 & 96-98	**Amendment of adopted infrastructure charges regime** The clauses provide for the indexing of adopted infrastructure charges	While acknowledging the provisions about fundamental legislative principles under the Legislative Standards Act 1992, and in particular the need for legislation to have sufficient regard to the rights and liberties of individuals by imposing obligations retrospectively, it is considered that there is a strong case for backdating the commencement of these clauses to 6 June 2011, the date of commencement of the legislation establishing the adopted charges regime and to also allow the resolutions of councils and distributor-retailers to be backdated to the 1 July 2011 commencement date of the new charges regime. This should apply to those aspects of the clauses relating to the indexing of charges. The reasons in support of this are: 1. This will ensure consistency and simplicity in collection and payment of charges levied under the new regime when they fall due (i.e. most charges levied since 1 July will not fall due for payment for four or more years); 2. The current arrangements are inconsistent with the long established practice of indexing infrastructure charges to ensure they maintain their present value over time.