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Moreton Bay Regional Council

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The Research Director
Transport, Local Government and Infrastructure Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Sir or Madam,

SUBMISSION ON CHANGES PROPOSED UNDER THE SUSTAINABLE PLANNING AND OTHER LEGISLATION AMENDMENT BILL 2011

Thank you for your recent invitation to comment on changes to various Acts proposed under the Sustainable Planning and Other Legislation Amendment Bill 2011. While Council is basically supportive of many of the proposed changes, there are a few that give cause for significant concern. In particular, the clauses dealing with escalation of adopted infrastructure charges and the transfer of obligations under infrastructure agreements covering former "urban development areas" are in urgent need of revision.

In regard to the methodology applying to escalation of adopted infrastructure charges, the proposal is unnecessarily cumbersome and unreasonable in terms of not being able to keep pace with normal inflationary trends for infrastructure works. The reasons behind these conclusions are as follows:-

(1) Prior to the Sustainable Planning Act coming into effect, the methodology that Moreton Bay Regional Council used for escalation of infrastructure contributions imposed as conditions of development approval was set out in detail in the applicable planning scheme policies. As trunk infrastructure had to be funded primarily from those contributions, it was imperative that they accurately track the inflation trends for the type of infrastructure involved. The escalation of the land content of the charge was tied to the movements in the "land value index" for the region while the works component was tied to the quarterly movements in the "building price index" for Brisbane as listed in Rawlinson's Australian Construction Handbook. Council viewed that methodology as a reasonable and accurate approach in the circumstances and able to be defended if challenged. Council recognises that the current regime of adopted infrastructure charges follows a totally different rationale to that required of a traditional Priority Infrastructure Charges regime, and the previous planning scheme policy methodology for charge escalation would not be appropriate in the current context. However, no system of escalation of charges should put a constructing authority in the continually deteriorating funding position that is currently proposed.

(2) On commencement of the operative provisions of the Sustainable Planning Act, escalation of trunk infrastructure charges/contributions was tied by section 848 of that Act to the movement in the all groups consumer price index (CPI) for Brisbane between the date that the approval came into effect and the date that the contribution was paid. That approach gave a degree of certainty to the development industry but did not reflect the true cost increases for the trunk infrastructure that was to be funded from those contributions. Regardless, it was much simpler and far more effective than the current proposal.

(3) On a number of occasions prior to commencement of the adopted infrastructure charges regime on 1 July of this year, many Councils expressed a justifiable view to officers of the Department of Local Government and Planning (DLGP) that the new system needed to include a means of escalating charges levied under adopted infrastructure charges notices. Those local government concerns were heightened as each of the components of the new regime was released with the only escalation mechanism appearing to be the "potential" for the Minister to increase "maximum adopted charges" on an annual basis. Those "potential" increases would always be at least twelve months behind actual cost increases and could not be applied to charges that had already been levied through an adopted infrastructure charges notice. Despite assurances from officers of DLGP, the new regime came into effect without a means of escalating charges once they were set in an adopted infrastructure charges notice despite the fact that payment could be made a decade or more after the issue of that notice. Although any system of escalation of charges is better than what we currently have, Council reiterates its previously stated view that no system of escalation of charges should put a constructing authority in a continually deteriorating trunk infrastructure funding position.

(4) The methodology proposed in the current Bill relies on Council tracking movements in the all groups CPI for Brisbane for the period between when the charges were levied and when they were paid, applying those CPI increases to the adopted charges listed in the relevant adopted infrastructure charges notice, comparing that to the amount which could be levied under the adopted infrastructure charges resolution current at that time, and then adopting the lesser of the two. This is further complicated by the fact that the Minister's "potential" increases, on which the amounts in the most recent version of the adopted infrastructure charges resolution will no doubt be based, are tied to the "3-year moving average annual percentage increase in the producer price index for Queensland road and bridge construction" while the Bill escalation provisions are tied to the "all groups consumer price index for Brisbane". Given the operation of section 848 of the Sustainable Planning Act as outlined in (2) above, Council can see no logical reason for the proposed requirement to undertake two separate calculations and then to apply the lesser figure. Similarly, Council can see no reasonable justification for adopting two different escalation factors, one for the Minister's "maximum" increases and another for adopted infrastructure charge notice increases.

(5) Council can see no reasonable justification for:-

- the Minister's increases in the "maximum adopted charge" not being a mandatory obligation;
- the Minister's increases not being applied more frequently (quarterly rather than on an annual basis);

- not modifying the mandatory format for an adopted infrastructure charges resolution to allow the Minister's gazetted increases to be automatically adopted under the current resolution on the gazettal date and obviating the need for each Council to adopt a new resolution after each gazettal of a new "maximum adopted charge";
- adoption of the "3-year moving average annual percentage increase in the producer price index for Queensland road and bridge construction" for the Minister's "potential" increases but only the "all groups consumer price index for Brisbane" for the escalation of the adopted charge after it is levied;
- the adoption of the lesser of the two escalated amounts given that, under the current provisions, the Minister's increases will always be twelve months or more behind actual increases;
- not adopting a means of escalation which more accurately reflects actual infrastructure cost increases (CPI is not an accurate reflection of land and infrastructure construction cost increases); and
- escalation not being able to be applied to amounts already levied, but not paid, at the commencement date of the proposed escalation provisions (the development industry has necessarily accepted the effects of inflation on construction costs generally and is used to the flow-on effects that it has on infrastructure charges. If escalation will not be able to be applied to charge amounts listed in adopted infrastructure charges notices issued prior to the amending Act coming into effect, payments which are subsequently received will effectively be at a discounted rate. As previously indicated, the gap between the issue of an adopted infrastructure charges notice and actual payment of the charge can be a decade or more, thereby resulting in a totally unsustainable discount on charges that would otherwise be payable and one which no other supplier of goods or services could be expected to viably tolerate).

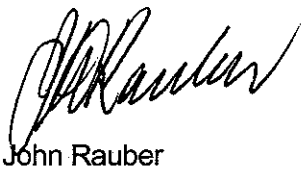
Council recognises that the issues raised in the first three dot-points are outside of the scope of the amendments proposed in the current Bill but reiterates its view that the Bill should be amended to include them, thereby facilitating adoption of a more complete and workable package for adopted infrastructure charges.

On the issue of the transfer of obligations under infrastructure agreements, it is simply an unreasonable obligation for a public sector entity to be bound, without its consent, to the terms of an agreement to which it was not a signatory. While Council recognises the practicalities of the situation and the intent of the transfer once the declaration of land as an "urban land development area" is revoked, that transfer should have been envisaged at the time of the original declaration and the "rules of succession" should have been agreed at the outset. It would not be unreasonable for the amendments to the Urban Land Development Authority Act to be expanded to include a requirement that the "superseding public sector entity" be consulted on all infrastructure agreements pertaining to the development area, and that the transfer of obligations only apply in those instances where that "superseding public sector entity" has formally consented to being a party to the infrastructure agreements.

Council appreciates the opportunity to comment on the changes envisaged under the Sustainable Planning and Other Legislation Amendment Bill 2011 and trusts that its concerns outlined in this submission are given the appropriate consideration.

For further information please contact Council's Policy Research Officer Tony Symons on 5433 2511 or email tony.symons@moretonbay.qld.gov.au.

Yours faithfully



John Rauber
Chief Executive Officer