



Planning and Other Legislation (Make Developers Pay) Amendment Bill 2023

**Report No. 8, 57th Parliament
Housing, Big Build and Manufacturing Committee
May 2024**

Housing, Big Build and Manufacturing Committee

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Acknowledgements

The committee acknowledges the assistance provided by the Member for Maiwar, Mr Michael Berkman.

All web address references are current at the time of publishing.

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Chair's foreword

This report presents a summary of the Housing, Big Build and Manufacturing Committee's examination of the Planning and Other Legislation (Make Developer's Pay) Amendment Bill 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The committee has recommended that the Bill not be passed.

The prospect of the unintended consequences of this Bill, especially the scenario of potentially increasing the cost of new housing and decreasing the supply of new housing through fewer housing developments, was of particular concern to the committee.

On behalf of the committee, I thank individuals and organisations who made written submissions on the Bill. I also thank the Parliamentary Service staff and Secretariat who supported this inquiry.

I commend this report to the House.

A handwritten signature in black ink, appearing to read 'C. Whiting', written in a cursive style.

Chris Whiting MP

Chair

Recommendations

Recommendation 1	3
The committee recommends the Planning and Other Legislation (Make Developers Pay) Amendment Bill 2023 not be passed.	3

Executive Summary

On 15 November 2023, Michael Berkman MP, Member for Maiwar, introduced the Planning and Other Legislation (Make Developers Pay) Amendment Bill 2023 (the Bill) into the Queensland Parliament. The Bill was referred to the former State Development and Regional Industries Committee.

On 13 February 2024, the Legislative Assembly amended Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, establishing the Housing, Big Build and Manufacturing Committee. The Planning and Other Legislation (Make Developers Pay) Amendment Bill was then transferred to this committee for detailed consideration.

About the Bill

The Bill seeks to give local governments flexibility to charge developers for trunk infrastructure according to the cost of delivering that infrastructure.

The Bill proposes to achieve this flexibility through the removal of the Maximum Allowable Charge (MAC) and subsequent references to the MAC in the *Planning Act 2016* and the *South-East Queensland Water (Distribution and Retail Restructuring Act) 2009*.

Issues canvassed by committee

Many stakeholders noted that the intention of the Bill was positive and confirmed the need for the modernisation of Queensland's infrastructure funding and charging framework to reduce the current trunk infrastructure funding gap and minimise the cost-shifting onto councils and local communities.

However, stakeholders were concerned that this Bill would not provide the outcomes required by local governments, with the complete removal of the MAC not only resulting in increased costs for developers, but also the potential unintended consequence of increased property prices.

The committee considered the evidence before it and has recommended that the Planning and Other Legislation (Make Developers Pay) Amendment Bill 2023 not be passed.

Legislative compliance

The committee's deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA). The committee was satisfied that there were no breaches to fundamental legislative principles and the Bill is compatible with human rights as outlined in the HRA.

1 Introduction

1.1 Policy objectives of the Bill

Infrastructure charges are levied by local governments on developers to account for the additional pressure placed on pedestrian crossings, parks, flood mitigation, public and active transport and other community services as the local population increases.¹

The objective of the Bill is to give local governments the flexibility to charge developers for trunk infrastructure according to the cost of delivering that infrastructure.²

The explanatory notes state the Bill will amend the *Planning Act 2016* and the *South-East Queensland Water (Distribution and Retail Restructuring Act) 2009* to remove references to the Maximum Allowable Charge (MAC) for providing trunk infrastructure for a development.³ Further, the explanatory notes state that there is no alternative method of achieving the policy objectives.⁴

The Member for Maiwar provided further clarification that the purpose of removing the MAC is to allow local governments the power to make decisions about how best to recover costs and strike a balance in their communities.⁵ The Member concluded that the Bill is the first step to enable local governments to raise additional funds to keep pace with increased demand, and the Bill does not preclude local governments from seeking additional revenue streams to deliver the same.⁶

1.2 Background

The explanatory notes outline that the existing caps on infrastructure charges create a disconnect between the regulated maximum amount to be charged and the costs incurred by local governments and communities to fund the associated essential infrastructure.⁷ The explanatory notes also state that the MAC limits flexibility for local governments to respond to inflation.⁸

In his introductory speech, the Member for Maiwar stated the following reasons for introducing the Bill:

Infrastructure charges are one of the few ways councils can make developers contribute towards the things that growing communities need. They fund pedestrian crossings, parks, flood mitigation, public transport, community facilities and services. It makes sense that if a developer is able to come in and make a profit building in the area, they should give some of those profits back to the community.

The Member for Maiwar asserted that the Bill will grant local governments and councils flexibility to charge developers based on the gross cost of building trunk infrastructure, rather than capping such costs where the cap may be lower than the cost of land or construction.⁹

¹ Explanatory Notes, p 1.

² Explanatory Notes, p 1.

³ Explanatory Notes, p 1.

⁴ Explanatory Notes, p 2.

⁵ Member for Maiwar, correspondence, 7 February 2024, p 3-4.

⁶ Member for Maiwar, correspondence, 7 February 2024, p 6.

⁷ Explanatory Notes, p1 citing generally B James, 'Maximum Infrastructure Charges: Implications for Urban Transport Planning', Paper presented at the Australasian Transport Research Forum, Auckland, 27 – 29 November 2017.

⁸ Explanatory Notes, p 1.

⁹ Explanatory speech by Mr Berkman MP, Queensland Parliament Record of Proceedings, 15 November 2023 p 3512.

1.2.1 Current framework for infrastructure charges

The Queensland infrastructure charging framework under the *Planning Act 2016* (Planning Act) sets a maximum amount that local governments and distributor-retailers can levy for trunk infrastructure, where these entities have the required plans (Local Government Infrastructure Plans) in place.¹⁰

The cap within the infrastructure charging framework aims to establish a limit on the amount developers contribute towards infrastructure costs, ensuring manageability and predictability, while supporting the financial sustainability of infrastructure providers like local governments and distributor-retailers. The Department of Housing, Local Government, Planning and Public Works (the Department) advised that this framework was not designed to achieve 100 percent cost recovery for trunk infrastructure, acknowledging shared responsibility for funding. State and federal government grants supplement developer contributions, contributing to essential project viability and enhancing local government sustainability.¹¹

Schedule 16 of the Planning Regulation 2017 contains the ‘Prescribed amount’ – the maximum amount that a local government or distributor-retailer can adopt in a charges resolution. The charges resolution is the document governing what infrastructure charges can be issued. As per section 112 of the Planning Act, these amounts are automatically indexed at the start of the financial year. The increase is calculated based on the 3-yearly moving average quarterly percentage increase in the Producer Price Index (PPI), which is defined in Schedule 2 of the Planning Act to be the producer price index for construction 6427.0 (ABS PPI) index number 3101—Road and Bridge construction index for Queensland published by the Australian Bureau of Statistics.¹²

The Department advised that there are 41 local governments that levy charges under the capped charges framework, having Local Government Infrastructure Plans (LGIPs) in place adding that the framework provides flexibility for these local governments to determine the charges they levy, up to the maximum amount. Not all local governments levy infrastructure charges, some don’t charge the maximum amount and some offer incentives as a way to stimulate development.¹³

The Department advised that local governments and distributor-retailers are able to levy a charge above the capped charges framework with the agreement of a developer through an Infrastructure Agreement. These are generally for development outside of a council’s planned development area, or for development proposed at densities above what was anticipated by the council’s land use and infrastructure planning. The Department also advised that infrastructure agreements are common in Queensland and are not subject to the capped charge.¹⁴

1.3 Consultation

The explanatory notes state that the Member for Maiwar developed the Bill based on stakeholder and community feedback.¹⁵ However, no information was provided in the explanatory notes to indicate who was consulted, nor was there information on outcomes from the consultation process.

1.4 Legislative compliance

The committee’s deliberations included assessing whether or not the Bill complies with the Parliament’s requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

¹⁰ DHLGPPW, correspondence 10 May 2024, p 1.

¹¹ DHLGPPW, correspondence 10 May 2024, p 1.

¹² DHLGPPW, correspondence 10 May 2024, p 1.

¹³ DHLGPPW, correspondence 10 May 2024, p 1.

¹⁴ DHLGPPW, correspondence 10 May 2024, p 2.

¹⁵ Explanatory notes, p 2.

1.4.1 *Legislative Standards Act 1992*

No issues relating to fundamental legislative principles were identified in the Planning and Other Legislation (Make Developers Pay) Amendment Bill 2023 (Bill).¹⁶

1.4.2 *Human Rights Act 2019*

The assessments of the Bill's compatibility with the *Human Rights Act 2019* are included in the next section of this report. The committee was satisfied that the Bill is compatible with the HRA.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the *HRA*. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.5 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Planning and Other Legislation (Make Developers Pay) Amendment Bill 2023 not be passed.

¹⁶ Fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. These principles include requiring that legislation has sufficient regard to rights and liberties of individuals and the institution of Parliament. *Legislative Standards Act 1992* (LSA), s 4. Matters relating to the rights of individuals that generally would be considered in an analysis of fundamental legislative principles are not addressed in this brief if those rights are protected under the *Human Rights Act 2019*.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor, or technical amendments.

2.1 Amendment to the *Planning Act 2016*

The Bill amends the Planning Act by removing:

- powers to make a regulation prescribing the maximum amount for an adopted charge for providing trunk infrastructure (s112)
- the requirement that the maximum adopted charge not be more than set by regulation (s114(5))
- references to maximum adopted charges (s115 and sch 2).¹⁷

It also makes a consequential amendment to s99BRCG in the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, removing reference to the maximum adopted charge for trunk infrastructure prescribed by regulation under the Planning Act.¹⁸

2.1.1 Impacts on developers

Inquiry participants submitted concerns about the removal of the Maximum Allowable Charge (MAC) leading to uncertainty for developers and their investors. These participants stated that when undertaking feasibility analyses, developers require a high level of certainty, with capped infrastructure charges assisting in the projection of more accurate development costs. They advocated that the uncertainty caused by the removal of the MAC could impact on the delivery of housing developments and premises for commercial or industrial enterprises.¹⁹

2.1.1.1 *Member's response*

The Member responded that pursuant to s120 of the *Planning Act 2016*, infrastructure charges can only be issued in respect of the extra demand placed on trunk infrastructure that the development will generate. He stated that this provision creates an appropriate ceiling and parameters to estimate charges, reducing potential uncertainty.²⁰

The Member noted that the viability of any project is dependent on the ability for it to attract financing, which depends on a range of factors, including production costs but more importantly consumer demand, and the success of pre-sales. He concluded that any change to infrastructure charges would factor in as a component of the production costs, but on its own is unlikely to substantively impact the financing and viability of most developments.²¹

The Member clarified that the Bill itself does not mandate that local governments increase infrastructure charges but provides flexibility and agency to determine the appropriate charges in light of a range of relevant circumstances, including consideration of the financial viability for desirable new developments.²²

¹⁷ Explanatory notes, p 3.

¹⁸ Explanatory notes, p 4.

¹⁹ Central Highlands Regional Council, submission 1, p 2; Housing Industry Association, submission 4, pp 2-3; Property Council of Australia, submission 7, pp 1-2; Urban Development Institute of Australia (UDIA), submission 14, p 6.

²⁰ Michael Berkman MP, correspondence, 7 February 2024, p 2.

²¹ Michael Berkman MP, correspondence, 7 February 2024, p 2.

²² Michael Berkman MP, correspondence, 7 February 2024, p 2.

2.1.1.2 Departmental response

The Department of Housing, Local Government, Planning and Public Works (the Department) stated that the LGAQ commissioned research to understand the gap between infrastructure delivery costs and infrastructure charges and has presented some findings in its recent report 'A fairer funding deal with Queensland communities: Fixing Queensland's trunk infrastructure funding framework'. The Department advised, to be able to understand and to critically assess the issues and equity balance, the Queensland Government has requested further information and data about the income received from levied charges and the proportion that has contributed to the real cost of infrastructure delivery. To date this requested information and data has not been received by the Queensland Government.²³

2.1.2 Impacts on home buyers

Inquiry participants asserted that the financial uncertainty experienced by developers and investors, as discussed in the previous section, would lead to stricter lending terms to compensate for the perceived risk, resulting in higher borrowing costs. Participants argued that developers would then have to pass these increased costs onto home buyers.²⁴ They elucidated that should homebuyers no longer accept these costs due to interest rate and cost of living increases, it would not be feasible for developers to build, thereby reducing the supply of housing, decreasing rental stock and increasing rents.²⁵

2.1.2.1 Member's response

The Member responded that the Bill does not necessarily increase infrastructure charges, instead it gives local councils the flexibility to set infrastructure charges at more appropriate levels. He stated that any increases in infrastructure charges tended to affect the profit margins of developers, rather than consumers.²⁶

The Member maintained that housing prices are not determined by the production costs of development but by the highest price the market will pay. In turn, he stated that housing asset inflation tended to be driven by the availability of investment finance, increased consumer capacity to borrow, property speculation and competition between consumers, not necessarily increased production costs.²⁷

2.1.2.2 Departmental response

The Department of Housing, Local Government, Planning and Public Works responded that any intervention without transparent evidence risks impacting new housing supply during housing challenges, with potential additional costs being passed onto Queenslanders trying to buy a home, when they are already under pressure. The Department stated that it is a complex issue, and any potential change needs to be equitable, with no one sector having to bear the full burden for delivering infrastructure.²⁸

2.1.3 Impacts on local governments

Inquiry participants commented that the removal of the MAC could impact on the incentive of local governments to innovate, plan and deliver cost-effective trunk infrastructure and it could also create uncertainty in the administration of appropriate charges.²⁹

²³ DHLGPPW, correspondence 10 May 2024, p 2.

²⁴ Housing Industry Association, submission 4, p 2; UDIA, submission 14, p 3.

²⁵ UDIA, submission 14, p 3.

²⁶ Michael Berkman MP, correspondence, 7 February 2024, pp 2-3.

²⁷ Michael Berkman MP, correspondence, 7 February 2024, p 3.

²⁸ DHLGPPW, correspondence 10 May 2024, p 2.

²⁹ Central Highlands Regional Council, submission 1, p 2; UDIA, submission 14, p 5.

Inquiry participants also reasoned that infrastructure charges are not meant to cover the full cost of trunk infrastructure, rather a range of funding sources are drawn upon to support the financial sustainability of stakeholders, including local and state governments, developers, property owners and the general community.³⁰

2.1.3.1 Member's response

The Member responded that the objective of the proposed change is to give local governments flexibility to administer infrastructure charges in the way that best serves their local community. He noted this will inevitably require the balancing of various factors, and in the early stages may require some transition. The Member suggested that the Bill makes this a matter for local governments, who are best placed to make the relevant decisions; however he contends if current charges are working, it is an option for local governments to maintain those charges or make increases consistent with the Building Price Index, or another measure they consider appropriate.³¹

The Member stated that the current maximum adopted charge has not kept pace with the costs of construction and maintenance. Local councils across south-east Queensland are struggling to cope with growing populations, and he noted some submitters were supportive of local governments being in a position to recover the full costs of increased demand on trunk infrastructure, or at least an amount that did not risk the financial viability of local government or lead to significantly increased rates.³²

2.1.3.2 Departmental response

The Department of Housing, Local Government, Planning and Public Works stated that the cap within the infrastructure charging framework aims to establish a limit on the amount developers contribute towards infrastructure costs, ensuring manageability and predictability, while supporting the financial sustainability of infrastructure providers like local governments and distributor-retailers. The Department asserted that this framework was not designed to achieve 100 percent cost recovery for trunk infrastructure, acknowledging the shared responsibility for funding. The Department clarified that state and federal government grants supplement developer contributions, contributing to essential project viability and enhancing local government sustainability.³³

2.1.4 Future reform of the Maximum Allowable Charge

The Local Government Association of Queensland (LGAQ) agreed with the intent of the Bill and stated that they and Queensland councils have been consistently calling for the modernisation of Queensland's infrastructure funding and charging framework over multiple years, to reduce the trunk infrastructure funding gap and minimise cost shifting onto councils and local communities.³⁴

While the LGAQ considered there to be broad agreement that the current MAC needed to be increased and more appropriately indexed, they stated there was support among councils for a broader range of infrastructure funding solutions. The LGAQ believes a more fulsome, nuanced approach is needed – with a range of short- and long-term solutions.³⁵

³⁰ Central Highlands Regional Council, submission 1, p 2; Planning Institute of Australia, submission 13, p 2; UDIA, submission 14, p 4.

³¹ Michael Berkman MP, correspondence, 7 February 2024, p 3.

³² Michael Berkman MP, correspondence, 7 February 2024, pp 3-4.

³³ DHLGPPW, correspondence 10 May 2024, p 1.

³⁴ LGAQ, submission 12, p 1.

³⁵ LGAQ, submission 12, p 1.

2.1.4.1 *Departmental response*

The Department of Housing, Local Government, Planning and Public Works stated that the Queensland Government will continue to work with the LGAQ and local governments to continue examining the real cost of infrastructure delivery and appropriateness of the capped charge, as well as investigating longer-term systemic improvements for planning, funding and delivering critical infrastructure required to support population growth, housing and land supply.³⁶

The Department noted that since the capped infrastructure charges framework commenced in 2011, there has been pressure for both an increase and decrease of infrastructure charging. They explained that while local governments and the LGAQ advocated for an increase in the MAC, industry stakeholders asserted that the cost of infrastructure delivery is a major barrier to bringing forward new housing supply and in delivering land for housing at an affordable price.³⁷

2.1.5 Legislative compliance – Human rights

By removing references to maximum adopted charges (MAC) for providing trunk infrastructure for a development, the Bill would allow local governments to charge developers for trunk infrastructure according to the cost of delivering the infrastructure.³⁸ This could result in extra costs for developers and is potentially a limitation on their property rights.

Under section 24 of the HRA, a person must not be arbitrarily deprived of their property.³⁹ It appears that the deprivation of property that could result if the Bill is passed would not be arbitrary (that is, unreasonable, disproportionate or capricious)⁴⁰ because the infrastructure charges could only be levied by local government ‘for trunk infrastructure according to the cost of delivering the infrastructure’.⁴¹ Therefore, the Bill would not be limiting a developer’s property rights.

While many developers ‘subject to any major financial impost from increased infrastructure charges’ would be corporate entities,⁴² some developers affected by the Bill could be sole traders or ‘mum and dad’ investors or other individuals, such as those investing through self-managed superannuation funds. Only those individuals, not the corporations, have property rights under the HRA.⁴³

Committee comment

The committee is of the view that the Bill should not be passed. The prospect of the unintended consequences of this Bill, especially the scenario of potentially increasing the cost of new housing and decreasing the supply of new housing through fewer housing developments, is of particular concern.

³⁶ DHLGPPW, correspondence 10 May 2024, p 2.

³⁷ DHLGPPW, correspondence 10 May 2024, p 2.

³⁸ Explanatory notes, p 1.

³⁹ *Human Rights Act 2019*, s 24(2).

⁴⁰ Kylie Evans and Nicholas Petrie, *Annotated Queensland Human Rights Act*, Lawbook Co, 2023, p 209.

⁴¹ Explanatory notes, p 1.

⁴² Statement of compatibility, p 1.

⁴³ *Human Rights Act 2019*, s 11.

Appendix A – Submitters

Sub #	Submitter
1	Central Highlands Regional Council
2	Jonathan Peter
3	Ciara Horton
4	Housing Industry Association
5	Logan City Council
6	Unity Water
7	Property Council of Australia
8	Council of Mayors SEQ
9	Queensland Water Directorate
10	Urban Utilities
11	Name Withheld
12	Local Government Association of Queensland
13	Planning Institute of Australia
14	Urban Development Institute of Australia, Queensland

Appendix B – Briefing with Private Member

Brisbane, 12 February 2024

- Michael Berkman MP, Member for Maiwar