Government Response to the
State Development, Infrastructure and Industry Committee

Report No. 41

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

Recommendation 1
The committee recommends the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014 be passed.

The Government thanks the Committee for its careful consideration of the Bill and supports the Committee's recommendation that the Bill be passed.

Recommendation 2
The committee recommends the Deputy Premier and Minister for State Development, Infrastructure and Planning and the Department for State Development, Infrastructure and Planning:

(a) consider all of the issues raised by submitters to the committee's inquiry, in detail, prior to the second reading debate on the Bill, and
(b) continue to consult with stakeholders in relation to the development of the supporting statutory material following passing of the Bill.

The Government supports this recommendation.

The Deputy Premier has considered all of the issues raised by submitters to the Committee's inquiry. The majority of issues are addressed in the Committee's report.

At the Deputy Premier's request, the Department of State Development, Infrastructure and Planning (DSDIP) in consultation with the Department of Energy and Water Supply completed a comprehensive review and in-depth analysis of the issues and concerns raised by submitters to the Committee's inquiry. After considering this analysis, amendments will be moved to address a number of issues and to ensure as far as possible that the Bill is practical, functional and will deliver an effective long-term infrastructure planning and charging framework.

DSDIP is continuing to work collaboratively with key local authority (local government and water distributor-retailer) and development industry stakeholders to manage the practical implementation of the reforms, including the development of the supporting statutory material. Draft versions of guidance material in relation to cost calculation methodologies and the statutory guideline for local government infrastructure plans have been provided to all stakeholders for review. Stakeholder feedback will be considered and used to further refine the supporting statutory and non-statutory guidance material.

With respect to issues raised in relation to the proposed amendments to the *State Development Public Works Organisation Act 1971* (SDPWO), DSDIP has recently consulted the Environmental Defenders Office about particular issues raised in its submission. These matters have been included in proposed amendments to the Act and regulation.

The Office of the Coordinator-General will continue to consult with stakeholders on the implementation of the new Part 4A provisions. In particular, the integration of the assessment process with existing EIS assessment practices.

Recommendation 3
The committee recommends the Bill be amended to clarify that local governments are not required to consult with external consultants who were engaged to prepare a local government infrastructure plan.

The Government supports this recommendation. Amendments will be moved to remove unnecessary processes and restrict the involvement of external consultants who were engaged to prepare local government infrastructure plans.

Recommendation 4
The committee recommends the Bill be amended to ensure that credit is not provided for development for which infrastructure charges were not paid.

The Government supports this recommendation. The Committee's recommendation is consistent with the original intent of proposed section 636. Amendments will be moved to ensure that proposed section 636 provides that credit is not provided for development for which infrastructure charges were not paid.

The amendment proposed for section 636 will also apply to the relevant section of the *South East Queensland Water (Distribution and Retail) Restructuring Act 2009* (SEQ Water Act) and will therefore apply to distributor-retailers.

Recommendation 5
The committee recommends proposed section 671 which provides an obligation to negotiate an infrastructure agreement in good faith be amended to clarify that the examples relate to subsection (3).

The Government supports this recommendation. An amendment will be moved to clarify that the examples provided in proposed section 671 relate to subsection (3) not subsection (2).

Recommendation 6
The committee recommends that the Deputy Premier and Minister for State Development, Infrastructure and Planning respond to the issues raised by the Queensland Environmental Law Association and considers any necessary amendments to the Bill.

The Government supports this recommendation in principle and will continue to work with the Queensland Environmental Law Association to address its concerns.

In its submission, the Queensland Environmental Law Association outlined several issues in relation to the inclusion of the provision which obligates applicants to negotiate an infrastructure agreement in good faith.

Infrastructure agreements have a much wider application than agreements about local government infrastructure (i.e. infrastructure agreements are frequently used for agreements about the provision of State infrastructure). Reforming the infrastructure agreement process was not an objective of the overall infrastructure framework reform. However, the inclusion of the *obligation to negotiate in good faith provision* was considered a necessary response to stakeholder comments on how this process is often manipulated.

The proposed provision aims to clarify the actions and procedures which are required for infrastructure agreement negotiations to be purposeful and fair, without impinging on the current flexibility which is a necessity of infrastructure agreements. Other options for addressing the issues raised by stakeholders about infrastructure agreements were canvased such as a standardised

template. All other options were found to further constrain or slow the infrastructure agreement process.

It is recognised that the proposed amendment may result in some development being delayed as a result of an appeal made relating to section 671. However, it is expected that this will occur infrequently and that, in general, the provision will encourage stakeholders to use best practice principles when undertaking an infrastructure agreement negotiation. As such, section 671 will not be amended.

Recommendation 7
The committee recommends the Bill be amended to provide that an infrastructure agreement cannot override a development approval decision of the Court.

The Government does not support this recommendation. This amendment has the potential to significantly impact the development sector and local authorities and has not been investigated by DSDIP, nor have stakeholders had an opportunity to comment on the matter as part of the infrastructure framework reform process.

The Government supports further analysis and consultation be undertaken on the matter and if appropriate will progress this as part of the preparation of the proposed Planning and Development Bill.

Recommendation 8
The committee recommends that consideration be given to amending the Sustainable Planning Act 2009 in relation to when an approval for a development takes effect to enable a development to continue despite an appeal process relating to a particular infrastructure charge.

The Government does not support this recommendation. The Bill does not impact existing arrangements relating to whether a development approval takes effect when an appeal process relating to infrastructure matters is proceeding. As noted by the committee, no substantial evidence has been provided to suggest there will be a large increase in the number of matters proceeding to appeal due to the inclusion of this new appeal right. Also, the importance of providing an appeal right for decisions which may have an adverse impact on stakeholders is considered to outweigh the concerns raised about potential resource impacts.

While an amendment will not be made to the Bill, the Government will investigate ways of ensuring that appeals about infrastructure do not unnecessarily delay development, and if appropriate, progress as part of the preparation of the Planning and Development Bill.

Recommendation 9
The committee recommends section 36B of the draft regulation to be made by the State Development and Public Works Organisation Act 1971 be amended to include that the public notification be advertised on the internet.

The Government supports this recommendation and will amend the Regulation to give effect to the recommendation. This is consistent with Clause 7.2 of the draft approval bilateral agreement, which requires Queensland to publish information relating to assessment and approval processes on the internet.

It is noted that the standard practice of the Coordinator-General EIS process is that proponent assessment documentation and evaluation reports are published on the internet.

Point of Clarification 1

The committee seeks clarification from the Deputy Premier and Minister for State Development, Infrastructure and Planning on how the transitional provisions within the Bill provisions will cater for local governments such as:

(a) Cairns Regional Council, that are in the process of preparing new planning schemes that do not currently contain priority infrastructure plans, and

(b) Brisbane City Council, whose priority infrastructure plan will commence on 1 July 2014.

An amendment to the Bill will be moved to allow local governments that have commenced drafting a priority infrastructure plan to continue drafting, and adopt that plan in accordance with the legislation and regulation currently in place. As such, local governments, such as Brisbane City Council, who have commenced drafting a priority infrastructure plan under the current legislation and regulations, will have the option to continue drafting in accordance with current regulation or choose to use the new regulation.

These arrangements will also apply to those local governments that are in the process of preparing a new planning scheme which does not currently contain a priority infrastructure plan, such as Cairns Regional Council. However, all local governments are required to include a priority infrastructure plan in their planning scheme prior to adoption of the planning scheme. This has been a requirement since 2005 and is not impacted by the Bill.

Point of Clarification 2

The committee seeks advice from the Deputy Premier and Minister for State Development, Infrastructure and Planning in relation to the intended effect of proposed new section 649 of the Bill.

The intent of proposed new section 649 of the Bill is to improve the certainty and consistency of the charges framework by clarifying the requirements for a local authority in regard to providing an offset or refund where an applicant is required to provide trunk infrastructure in accordance with a necessary infrastructure condition. The cost of the trunk infrastructure provided is to be offset against any infrastructure charge levied on the development by the local authority.

New section 649 includes a process for determining the value of offsets and refunds in a local government's infrastructure charges resolution or a water distributor-retailers board decision. Previously, the value of offsets and refunds have been determined through a negotiation process and set out in an infrastructure agreement, with no requirement to provide offsets or refunds for unidentified infrastructure. The ability to determine the real cost of infrastructure and provide an offset or refund for that cost will provide greater equity to the framework. Previously, where a local authority incorrectly predicted the cost of infrastructure, the developer was required to fund the gap between the real cost of the infrastructure and the predicted cost.

New section 649 also provides for mandatory offsets across all infrastructure networks for which the adopted charge is applied, regardless of the type of development infrastructure that is required to be provided in a necessary infrastructure condition.

Point of Clarification 3

The committee seeks advice from the Deputy Premier and Minister for State Development, Infrastructure and Planning regarding the intent of proposed new section 636 of the Bill and to clarify whether local authorities would be unable to include self-assessable development in the determination of additional demand.

Intent of proposed new section 636 of the Bill

It is an established practice of many local governments issue a 'credit' to recognise:

- the existing lawful use of a site;
- uses that were lawfully existing but have ceased taking place on a premises; or
- the existing rights to develop a site through a discounted infrastructure charge.

The intent of proposed new section 636 is to provide greater certainty to all stakeholders by stipulating the parameters which govern how a credit is issued within SPA.

Self-assessable development and the determination of additional demand

It is acknowledged that self-assessable developments can place additional demand on infrastructure networks (sewerage, water supply, roads, open space and drainage networks) and therefore should be subject to an infrastructure charge.

An amendment will be moved to ensure proposed section 635 provides for an infrastructure charges notice to be issued and therefore adopted infrastructure charges to be levied, regardless of who issued the development approval (e.g., when a certificate of classification is issued by a building certifier in relation to building works). This will ensure that local governments have an opportunity to levy infrastructure charges for self-assessable development when that development is required to get a building permit.

The amendment proposed to section 635 will also apply to the relevant section of the SEQ Water Act and will therefore apply to distributor-retailers.

Point of Clarification 4

The committee seeks advice from the Deputy Premier and Minister for State Development, Infrastructure and Planning in relation to the use of the term 'existing uses that are lawful' as opposed to 'lawful use' as defined in section 9 of the Sustainable Planning Act 2009.

The reference to 'existing uses that are lawful' as opposed to 'lawful use' as defined in section 9 of SPA has been a deliberate change of terms, as the definition of 'lawful uses' is not relevant for the purposes of proposed new section 636(2)(a) which refers to existing uses that are lawful that are currently being carried out while 636(2)(b) refers to future development that would be a lawful use.

Point of Clarification 5

The committee seeks advice from the Deputy Premier and Minister for State Development, Infrastructure and Planning as to why prior lawful existing uses and previously paid infrastructure charges were not included in proposed new section 636(2).

A review has been completed of the feedback from various stakeholders in relation to credits and existing lawful rights. It has been determined that prior lawful existing use rights and previously paid infrastructure charges must be considered when determining additional demand on trunk infrastructure and must be creditable.

An amendment will be moved to ensure that proposed new section 636 takes account of prior lawful existing uses and previously paid infrastructure charges. The amendment proposed to section 636 will also apply to the relevant section of the SEQ Water Act and will therefore apply to distributor-retailers.

Point of Clarification 6

The committee seeks advice from the Deputy Premier and Minister for State Development, Infrastructure and Planning in relation to whether a distributor-retailer would be considered a 'public sector entity' for the purposes of proposed section 673.

As water distributor-retailers have been excluded from the definition of public sector entity under proposed section 627, the drafting of the current proposed provision section 673 results in water distributor-retailers not being compelled to provide a copy of an infrastructure agreement to a local government when the local government is not a party to the agreement.
An amendment will be moved to ensure that proposed section 673 requires that where a water distributor-retailer is a party to an infrastructure agreement and the relevant local government is not a party, the water distributor-retailer is required to provide a copy of the infrastructure agreement to the local government.

Point for clarification 7
The committee seeks clarification from the Deputy Premier and Minister for State Development, Infrastructure and Planning that all processes relating to the assessment of a bilateral project declaration and coordinated project declaration can occur concurrently, in particular, the processes to seek further information from proponents and others.

It is intended that the two processes run concurrently. In particular, proposed sections 54K and 54Q make specific reference to this.

Proposed section 54K provides that a person may apply to the Coordinator-General for a bilateral project declaration at the same time an application for a coordinated project declaration for the project is made. Proposed section 54Q provides that the proponent must publicly notify the draft protected matters report at the same time as publicly notifying the environmental impact statement, unless the proponent has already notified the environmental impact statement.

It is envisaged that the two processes will be integrated wherever possible. Administrative arrangements will be developed to streamline the assessment, particularly where further information is required from proponents and other advice agencies.

Point for clarification 8
The committee requests the Deputy Premier and Minister for State Development, Infrastructure and Planning considers the issues raised in relation to the Coordinator-General's discretionary power in proposed section 54W(3)(b) and advise whether any safeguards are in place in relation to this power.

Proposed section 54W(3)(b) would allow the Coordinator-General to consider 'any other matter the Coordinator-General considers relevant'.

There are three safeguards in relation to the exercise of section 54(3)(b). First, the discretion of the Coordinator-General is limited by section 54T(3) which requires that 'the Coordinator-General must not approve the undertaking of the coordinated project to the extent the project will impact an environmental matter protected by a specified provision in a way that, in the Coordinator-General's opinion, is unacceptable or unsustainable'. Second, section 54W(2)(b) requires that the Coordinator-General must 'ensure that the approval and conditions are not inconsistent with the bilateral agreement'. Third, the Coordinator-General may be required to justify the relevance of 'any other matter' that he or she considers relevant. The overall intent of proposed section 54W is to ensure that the Coordinator-General's decision criteria are consistent with existing Part 4 of the SDPWO Act, whilst being bound by and within the scope of the proposed bilateral approvals agreement.

It should also be noted that under section 136(1)(b) of the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), the Commonwealth Environment Minister must consider 'economic and social matters', providing a great breadth of scope and discretion.

Point for clarification 9
The committee seeks advice from the Deputy Premier and Minister for State Development, Infrastructure and Planning in relation to the apparent inconsistency between the provisions of considering a proponent's environmental record proposed by the Bill and by the draft regulation and the provisions of the EPBC Act.

The Government will move an amendment to the definition of 'environmental record' in section 54I to include reference to the environmental history of a corporation's parent corporation and its executive officers. Section 136(4) of the EPBC Act provides:

(4) *In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister may consider whether the person is a suitable person to be granted an approval, having regard to:*

a) the person's history in relation to environmental matters; and
b) if the person is a body corporate – the history of its executive officers in relation to environmental matters; and
c) if the person is a body corporate that is a subsidiary of another body or company (the parent body) – the history in relation to environmental matters of the parent body and its executive officers.

The amendment would result in a closer alignment of the definition with that in the EPBC Act.

Point for clarification 10
The committee seeks advice from the Deputy Premier and Minister for State Development, Infrastructure and Planning regarding the rationale for the general exclusion of statutory timeframes within the State Development and Public Works Organisation Act 1971 and whether statutory timeframes will be considered for assessment and approval processes in the future.

The Coordinator-General's role is to efficiently coordinate environmental assessments of large-scale development projects and to bring together an integrated whole of Government decision while maintaining high environmental standards.

The proposed Part 4A to the SDPWO Act has been constructed to be consistent with the rest of the Act, which generally contains no statutory timeframes. It is not proposed to include further timeframes in the Bill.

Point for clarification 11
The committee seeks advice from the Deputy Premier and Minister for State Development, Infrastructure and Planning regarding the rationale for the apparent exclusion of those acting in the public interest from bringing a proceeding under the State Development and Public Works Organisation Act 1971.

It is understood that this issue is about third parties 'acting in the public interest' bringing an enforcement proceeding. Section 505(1)(d) of the *Environmental Protection Act 1994* enables 'someone else with the leave of the Court…' to bring proceedings to the Court relating to an offence provision.

An equivalent provision has not been included in the new section 54ZL(4). This is identical to the equivalent section in Division 8 of Part 4 of the SDPWO Act that was introduced in 2005. It is the view of the Government that the section is sufficiently open to a party that is genuinely affected by the project (i.e. a 'person whose interests are significantly adversely affected by the subject matter of the proceeding').

It is further considered that local governments and State agencies are well placed and sufficiently resourced to act appropriately in the public interest where an environmental offence provision may be breached.

Point for clarification 12

The committee requests the Deputy Premier for State Development, Infrastructure and Planning clarifies, for the benefit of the House, the current process for selecting external consultants and how costs may be apportioned between proponents.

Proposed section 54ZO(2) allows the Coordinator-General to recover from a proponent the reasonable cost of obtaining advice or services. This is consistent with Part 4 of the SDPWO Act.

In practice, Coordinator-General's costs are recovered by:

- standard fees applied to all project proponents for internal costs; and
- pass-through of actual external costs which include:
  - EIS process advertising and public display matters; and
  - occasional specialist technical advice not available within government.

It should be noted that the Australian Government is currently amending the EPBC Act to introduce a comprehensive fee scheme for environmental assessment.

The majority of 'coordinated projects' have required no external contractor advice.

The method of selecting external contract advice is based upon:

- the availability of technical experts to provide the specialist advice;
- exclusion of potential consultants who may be conflicted by relevant previous or current work for the proponent, the proponent's competitors or other relevant project stakeholders; and
- prior consultation with the proponent about the scope, methodology and approximate cost of the advice.

The Coordinator-General is bound by the competitive procurement processes of the Queensland Government for external contractor advice. Where the time available and nature of the advice permits, a competitive tender process is conducted prior to engagement of contractors. Where feasible, the project proponent is consulted about elements of the terms of reference for the contract.

Consequently, cost-effectiveness and value for money in obtaining the advice is given considerable priority. It has been very rare for there to be significant points of disagreement between the Coordinator-General and the proponent on either the need for the advice or the cost of its provision.

Due to time constraints and technical and geographic differences, it is very rare for costs of specialist contractor advice to be split between different project proponents. Nonetheless, cost apportionment could arise where two contemporary neighbouring proponents face the same technical challenges with the individual or cumulative impacts of their projects. In these instances, cost apportionment is negotiated on a case by case basis.

Where feasible, the Coordinator-General encourages project proponents to collaborate with their proponent neighbours to address overlapping or cumulative project impact issues.

The Coordinator-General is currently developing a separate initiative to establish standing panels of pre-approved technical experts to provide technical advice to the Coordinator-General, especially where time limitations prevent individual competitive tender processes from being undertaken.

Statement of Reservation

The approvals bilateral was raised under the previous Council of Australian Governments (COAG) reform agenda, and the strategic assessment was signed by the former Deputy Premier of Queensland in 2012 under the previous Labor Government.

The Coordinator General will consult further with key conservation groups during the implementation of the bilateral approval agreement and the proposed new SDPWO Act provisions.