STATE DEVELOPMENT, INFRASTRUCTURE AND INDUSTRY COMMITTEE

Members present:

Mr DF Gibson MP (Chair)
Mr MJ Hart MP
Mr SA Holswich MP
Mr R Katter MP
Ms KN Millard MP
Hon. TS Mulherin MP
Mr BC Young MP

Staff present:

Ms E Pasley (Research Director)
Ms M Telford (Principal Research Officer)
Ms M Westcott (Principal Research Officer)

PUBLIC HEARING—INQUIRY INTO THE SUSTAINABLE PLANNING (INFRASTRUCTURE CHARGES) AND OTHER LEGISLATION AMENDMENT BILL 2014

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 21 MAY 2014

Brisbane

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Committee met at 9.48 am

ACTING CHAIR: I declare open the public hearing into the committee's inquiry into the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014. I thank you for your attendance here today. I am Bruce Young, the member for Keppel, and acting chair of the committee. The other committee members here today are the Hon. Tim Mulherin, the member for Mackay and deputy chair; Mrs Kerry Millard, the member for Sandgate; Mr Ted Sorensen, the member for Hervey Bay; Mr Rob Katter, the member for Mount Isa; and Mr Michael Hart, the member for Burleigh.

The hearing today forms part of the committee's examination of the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014. The Parliament of Queensland Act 2001 requires the committee to examine the bill and consider the policy to be given effect by the bill and the application of fundamental legislative principles. The hearing is being transcribed by Hansard. For the benefit of Hansard, I ask that witnesses state their name and position when they first speak and speak clearly into the microphone. Before we commence, I ask that mobile phone devices be switched off or put onto silent mode. This hearing is a formal committee proceeding. The guide for appearing as a witness before the committee has been provided to those appearing here today. The committee will also observe schedule 3 of the standing orders. The hearing will conclude at 1.30 pm. I would now like to welcome Mr William Bowden.

BOWDEN, Mr William, Managing Director, WH Bowden Group of Companies

ACTING CHAIR: Would you like to make an opening statement?

Mr Bowden: I am the managing director of my companies and have mainly operated in the Pine Rivers shire. I grouped all the work done in the area myself such as town-planners. I had my own construction crew. I paid for headworks. I paid for infrastructure. I gave parks. I got to the stage where it is now impossible to subdivide.

ACTING CHAIR: Do you have any further comments?

Mr Bowden: I sure do. I appreciate being given the invitation to attend this meeting because I have been complaining about headworks infrastructure for the last 40 years. The council has got out of control. It depends how much money you give with your application to subdivide as to when you get your approval to the extent now where I know of a subdivision where they gave millions of dollars with the application to subdivide to get it approved. That would not look very good at a royal commission. Also hundreds of thousands of dollars for external water works were charged which could be spent anywhere in the shire.

I live in the area and I have done for the last 40 years. The area was more productive when I first went there. There were 90 blocks when I first moved in and bought them. They were for sale for three years and could not be sold. I sold them within three months and the council said I must be making a fortune. From there on we had trouble with the council and money.

They did some roadworks for me which were wrong so I had to change to other contractors because they did a better road even though it suited me, not the council. Sewage, infrastructure, water—it got to the stage where they charged what they liked at any time. You never knew where you stood. We still do not know how much we will be charged for infrastructure headworks. In recent times I built three industrial buildings to give the place some lift because it would not sell. So I built some buildings. A couple of years later—probably 10 years later—I decided to strata title. The council said, 'It will cost you $66,000.' I said, 'If you look out the window you will see they are already built.' She said, 'When you build them they will cost you $66,000 in strata title headworks.' I said, 'I will take you to court.' They said, 'It will cost you $6,000 to go to court so we will reduce it from $66,000 to $60,000.' This is the way things go. It is a matter of bargaining and who you talk to.

Thirty years ago I laid a water main three kilometres from Leitchs Road along South Pine Road to my property where I live, a 200-millimetre main. Today it would cost about half a million dollars. To tap into that main where I want to subdivide that land now, the council says that I have to pay headworks charges. That means I have to pay headworks charges on top of headworks charges. The infrastructure headworks charge bracket is going on and the land I want to rezone is where I live. Council came to my property two years ago with a deputation saying, 'We would like

you to build a 10-storey building on this land,' which was a bit out of character. I said no. Now the plan has gone to the state government for rezoning and my land will be left untouched and zoned rural residential even though they wanted me to build a 10-storey building. I want to put town houses on it.

ACTING CHAIR: Mr Bowden, I understand that you have this history with the council, but can I get you to talk about the bill? You are here to talk about the bill. I would rather you talk about the bill than the history.

Mr Bowden: Infrastructure headworks charges are now out of control and they have been for some time.

Mr MULHERIN: Mr Bowden, what is your solution?

Mr Bowden: The solution is that the internal works of subdivisions are paid for by the developer and the external works are paid for by the council. No headworks charges at all. Infrastructure is necessary but cannot be used as a racquet to bash you around the ears to make you give extra money to the councils. Internal works should be paid by the developer, and there cannot be bargaining about parks which is part of the bargaining process. The last time we met you gave us so much. How much are you going to give us this time? This is the way it carries on.

Mr HART: Have you read the bill that is proposed?

Mr Bowden: I think so.

ACTING CHAIR: Have you looked at the policy objectives of the bill?

Mr Bowden: No, I do not remember.

ACTING CHAIR: Does any of the committee have any questions for Mr Bowden?

Mr MULHERIN: I have another one. Say you wanted to subdivide a block of land and the main trunk infrastructure is some kilometres from your proposed development. Who should pay for that missing link?

Mr Bowden: The council should pay for it. The developer pays for the internal. I mentioned the trunk water main from Leitchs Road. I paid for that. Connecting to that would be another 50-odd people whom the council charged to connect and collected all the rates for the last 30 years at my expense. So it is all lopsided. It is all the council's way. They spend nothing. They collect the rates on all your developments. They should pay for the external works.

ACTING CHAIR: I hear what you are saying. That is why you are here today. Does any other member have any questions?

Mr HART: Mr Bowden, we are here to talk about the specific bill that is in front of us. It talks about trunk infrastructure, non-trunk infrastructure and the way local governments go about their planning processes. Have you got any comments about the actual bill and where the government is going with it? Do you see any issues with the actual bill that we are here to look at?

Mr Bowden: I do not recall the details of the bill you are talking about, but I can comment about planning. There should be more planning and more infrastructure put in by councils so they can encourage development. Right now all the trades are unemployed. The federal government and the state government are talking about employment. If you release land for sale now, you will create employment. Builders cannot buy land at present. There is none. The costs of a block of land now to develop are so high that by the time you buy the block and build a house on it you are up for about $600,000. It is too expensive.

Mr HART: The bill attempts to identify what exactly is trunk infrastructure and what is non-trunk infrastructure and who should pay for it. Is that a good idea?

Mr Bowden: The trunk should be paid for by the councils.

ACTING CHAIR: Understood. Mr Bowden, the time has come. We have given you the time that you have been allocated. Your time is now up. I want to thank you for your attendance today.

Mr Bowden: I thank you for the invitation. I hope you take notice of what I have said.

ACTING CHAIR: We do.

Mr Bowden: We are in a situation which is a disaster at present.

ACTING CHAIR: Understood. I hear what you are saying.

Mr Bowden: No development is taking place. Land has been devalued because you cannot subdivide it.

ACTING CHAIR: Thank you, Mr Bowden.

HANNAN, Mr Luke, Manager, Advocacy, Planning, Development and Natural Environment, Local Government Association of Queensland

HOFFMAN, Mr Greg, General Manager, Advocacy, Local Government Association of Queensland

ACTING CHAIR: I now welcome representatives from the Local Government Association of Queensland. Would you like to make an opening statement?

Mr Hoffman: Yes, thank you. Firstly, congratulations, Mr Chair, on your appointment and congratulations to Ted Sorensen, who is a new face on the committee but known to us. The association welcomes the opportunity to address the committee today. Firstly, I empathise with the committee in the difficult task before you in considering this very important bill within such condensed time frames. Given these time frames and the limited information publicly available and to yourselves prior to the announcements and release of details about the broader frame work, I will limit my comments today to the bill as requested and only to those proposed amendments to the Sustainable Planning Act.

The importance of the proposed amendments to the Sustainable Planning Act is evidenced by the fact that, although there was only one week to make submissions to the committee, of the total of 38 submissions received 14 were from local governments and three from respective local government representative bodies, making a total of 17 of 38 submissions from the local government sector. I would have liked to have seen some of those councils appearing before the committee today.

The LGAQ is disappointed with the condensed time frame to review and, importantly, test the proposed amendments in the bill given the critical importance of providing a functioning and equitable infrastructure funding framework that does not risk local governments' financial sustainability and liability. This is especially disappointing considering the considerable efforts of the department to engage with industry stakeholders early in the reform process.

Although the LGAQ broadly supports the bill's policy objectives of establishing a long-term local infrastructure planning and charging framework that is certain, consistent and transparent and which supports both local government sustainability and development feasibility in Queensland, it is quite evident that the balance of the proposed reforms are aimed squarely at maximising the availability of offsets and potential refunds to applicants while inequitably capping the charges or revenue ability to local governments.

The LGAQ has contributed significant resources, research, analysis and data to assist the department in analysing the potential impacts of the proposed reforms. Although some of the local government concerns on the proposed reform options were recognised, it is disappointing that some matters of critical concern remain outstanding and were not afforded broader consideration and remain untested at the local government level where the success or failure of this bill will occur. The outstanding issues in the bill do present a significant financial risk to local governments and further shift costs from the development industry to the community.

Firstly, I turn to the new process of converting non-trunk infrastructure to trunk infrastructure with appeal rights. This poses significant implications for local governments' infrastructure, planning, budgeting, capital programming, prioritisation and legal costs. This additional regulatory process will add an additional layer of red tape in the development assessment process that will increase uncertainty and lead to an increased number of disputes.

As stated on several occasions in our representations to the department, the very concept of the conversion process seems to be an overreaction without evidence that there has been a systemic problem of local governments either underplanning their infrastructure or misusing conditions of approval. Firstly, councils priority infrastructure plans are required to undertake full public consultation with the community which includes the development industry and a statutory review process by the state government. Secondly, conditions that may be applied to trunk and particularly non-trunk infrastructure are extremely limited and, as per other conditions, are subject to challenge in court if inappropriately applied. Claims to the contrary by the development industry are simply hearsay and hyperbole.

As outlined in the LGAQ's submission, we maintain this additional process is unnecessary and such applications would link directly with the existing application development processes through representations made during either the application assessment or through the negotiation

period following the issue of the original approval. Secondly, we seek an automatic annual indexation of the maximum charges prescribed under the SPRP. These changes have remained unchanged since 2011, essentially prohibiting the maximum charges from reflecting the increased building and construction costs of providing infrastructure. What this means in practice is that the gap ratepayers subsidise development is continuing to grow. Our own independent analysis that we have shared with the state government concludes that the current maximum charges only recover 69.9 per cent of the costs of providing the infrastructure. It is important to note this analysis is also based on the infrastructure list recently prescribed by the department as the essential infrastructure or fair value infrastructure. To date this means charges have dropped in value by approximately eight per cent in real terms already since their introduction in 2011. This simply has had the effect of transferring more costs from developers to ratepayers to provide infrastructure to cater for new development. It is ironic that the state government currently applied a 3.5 per cent annual indexation to its own fees and charges while freezing the maximum charge councils can apply or, alternatively, offering a lower charge regime subject to significantly qualified and uncertain conditions.

A third key issue identified in the bill is the removal of building approvals as a mechanism for local government to levy an infrastructure charge. This exclusion is counterintuitive to the state government's broader agenda of promoting planning schemes to fast-track development at the lowest level of assessment. For example, where local governments are currently planning to make multiunit developments self-assessable if zoned appropriately, they will not be able to levy an infrastructure charge for the additional demand on the infrastructure networks but would fund the necessary infrastructure in that area. This will actively discourage councils from streamlining the right development into the right locations.

Fourthly, the new provisions for offsets and refunds pose more problems. Clause 636 must be amended regarding mandatory lawful existing use credits to remove any doubt that credits for existing approved developments that have not yet occurred are limited to those for contributions that have already been made. Also, the practical implications of requiring details of the offsets and refunds to be included in the infrastructure charges notice will likely slow down decision time frames. These implications must be tested thoroughly with local governments prior to introduction to avoid unintended consequences, mitigate impacts and allow for business systems to be updated.

Finally, the statutory and advice guidelines to support the implementation of the bill are yet to be consulted on and will have significant bearing on the operations of the bill for councils. These guidelines must be developed and tested in genuine partnership with local government. This will help ensure we avoid any onerous or impractical requirements that create unnecessary costs on local government and ratepayers or create inadvertent delays for the development industry.

ACTING CHAIR: Mr Hannan, do you have any comment?

Mr Hannan: No further comment, thank you, Mr Chairman.

ACTING CHAIR: We will now go to questions.

Mr HART: Mr Hoffman, there seems to be quite a disconnect between what we hear from developers, and we have just heard from Mr Bowden. From his point of view, he feels there are things that he is charged for that he should not be charged for. On the other hand, councils are saying that developers are not paying enough for the infrastructure charges. This legislation is being put in place to clarify some of those things. Do you think it is not achieving that?

Mr Hoffman: That is the 64,000-dollar question. It is not lost on me and many others who have been in this process for a long time that the planning and economic development act was introduced in the 1990s followed by the infrastructure planning act and the Sustainable Planning Act, and now we are contemplating a new act all in a period of 15-plus years. It demonstrates to us all the complex nature of this. No matter what legislation is put in place, the bottom line is ultimately who pays for what is built. I do not believe we will ever resolve that debate to the satisfaction of all parties. Quite frankly, the industry wants to pay less and from a local government perspective we want to see the industry pay what we regard to be an appropriate cost. Our assessment to date is that cost is already subsidised in the charge regime that exists. Our concern is that further changes as we see them in this bill will exacerbate that situation, but in addition the approvals process is obviously designed to see the potential for further cost transfers to local government.

Whilst the bill attempts to resolve those issues as you identify, and we would like to see it do so, it is our assessment that the direction in which the resolution is heading will not see the situation resolved equitably from a local government perspective.

ACTING CHAIR: I suppose, Mr Hoffmann, what we are saying in essence is that what we want to do is hit the middle of the road. How do we achieve that? That is what we want to know. As you say, that is the 64,000-dollar question, but what I want to know is how do you then get to the bottom so the developer knows what he wants to pay but at the same time we do not want to be awarding costs to the ratepayer?

Mr Hoffman: Our position is that there are two things. The charges regime identifies what the costs are at the moment—the framework in which the costs operate. That is clear. The primary debate is in the first instance whether those amounts are fair and reasonable. We would argue, as indicated in our submission, that they are. The other issue is then when it comes to approvals in terms of what is trunk, what is not trunk and who therefore pays appropriately for that. Then the mechanisms around credits and offsets relate to that.

Our submission is that the mechanisms that exist in the act enable that to be reasonably dealt with. The changes that are proposed, in our view, exacerbate those problems. In fact, the timely decision that the industry seeks and that local government wants to provide in our view is potentially going to be frustrated by the mechanisms that are necessary to undertake the development rather than negotiation arrangements under which the bill is structured. Our submission has identified where we see those concerns and how we believe they should be or could be resolved.

ACTING CHAIR: Noted. Are there any questions?

Mr MULHERIN: Mr Hoffmann, I note that the LGAQ submission raised concerns about the developer's right of appeal to the Planning and Environment Court for applications to convert from non-trunk infrastructure to trunk infrastructure. Can you further advise the committee of the adverse implications contained within the proposed right of appeal?

Mr Hoffman: I will defer to my colleague on that one.

Mr Hannan: It is a new right of appeal, essentially. It is opening up a new ability to take it to the dispute committee itself and then further to the Planning and Environment Court. The great uncertainty that we have at this stage is that we are aware there are going to be advice guidelines developed outlining what a council's decision making should take into account regarding particularly the conversion of non-trunk infrastructure conditions. That potentially could lead to significant numbers of disputations and therefore increased costs for council, but it also increases the liability because if there are conversions from non-trunk to trunk essentially there are going to be more offsets and refunds that councils are liable for. Until we develop those guidelines and see how they will work in practice and test it thoroughly, there is a significant liability and risk to councils.

Mr MULHERIN: So within the bill there are restrictions on the appeal process?

Mr Hannan: There is, but there are new provisions obviously for appeals to occur regarding offsets and refunds and also for the conversion application process.

Mr Hoffman: I think the other aspect of that is the timing in which that process is to take place. It could well occur after the approvals process has effectively concluded, and that is the point we are making. The cost implications of that after the event are where the issue and uncertainty arise. It does certainly place local government in a very difficult position as to what it approves and when it approves it, when the longer-term implications of that are not dealt with at that time.

Mr MULHERIN: What mechanisms would the LGAQ refer to the appeal rights as contemplated by this bill?

Mr Hoffman: The adjudication of that matter should occur as part of the approvals process. That is the fundamental question because it sits at the heart of what the bottom line costs are to all parties, and it would be, I would think, in everyone's advantage to have that matter resolved at that time. If there is adjudication, timing is of importance in relation to that.

Mr HART: On that subject, if that is the case, if these costs are determined at the time the approval is being negotiated, how does a developer know what charges they may be up for? Do they just have a guesstimate at it or—

Mr Hoffman: I think that is the point we are making. Those matters should be resolved pretty much at the front end.

ACTING CHAIR: Prior to it going to the Planning and Environment Court, and you are saying that the risk is going to be at the determination of the Planning and Environment Court after the event?

Mr Hoffman: If there is a dispute, then yes it needs to be resolved—

ACTING CHAIR: So you want to see all of those costs resolved prior to the development starting.

Mr Hoffman: Yes.

Ms MILLARD: You are looking at other ways of trunk infrastructure and costs, offsets, et cetera. Are there any good examples of what works well that you have seen in other states that you think the committee should look into?

Mr Hoffman: Not that I can comment on.

ACTING CHAIR: Have you seen any other models that work well? Are there shires out there that do this very well? I understand there would probably be shires out there that would pass a lot of their costs on to the council, to the ratepayers.

Mr Hoffman: That is part of the decision-making process as to what concessions they may give, what decisions they make in relation to those matters. The important point to make here is that there is no doubt that local governments currently, particularly since the elections of 2012, have made it abundantly clear that in the growth areas they are doing their utmost to enable and support development. The mayors of South-East Queensland and the growth centres along the coast on numerous occasions have made the assertion that they are open for business and want to expedite the processes. Many of them are investing in changing their business systems and mechanisms around how they can expedite approvals and they are seeking to work with the industry to do that. That requires goodwill on both parts, and I suggest the councils are offering that goodwill to find the way in which those matters are resolved, negotiated and concluded before the development processes get underway.

It has been our view that processes exist in that, if there are matters in dispute, they have a mechanism to be resolved. Supposedly, industry have said they are reluctant to use them because they will complicate or damage relationships with councils. I find that surprising—in that if the parties are looking to find a way forward, as indicated at least from the council level, those negotiations cannot resolve the matters amicably or reasonably. What is proposed here is changing the system in a legislative sense to basically put the councils in a prejudicial position when it comes to what the bottom line implications are for them, and that is the point that concerns us greatly.

ACTING CHAIR: Understood.

Ms MILLARD: This committee worked on the Sustainable Planning Bill. We looked at and it was quite intensive so this is probably more of a general question. Moving forward from where we were then to where we are now, have the changes that were made helped in any way to alleviate some of the issues? Or have these issues always been here and they have not been alleviated?

Mr Hoffman: Are you talking about the changes to the act that were made 12 to 24 months ago?

Ms MILLARD: Yes,

Mr Hannan: There have been a lot of positive changes, and by all means there are some positives coming out of the bill itself right here—alleviating the issue regarding permissible changes, clarifying what conditions of approval are actually being applied. They are positive and they will help clarify a lot of the misunderstanding regarding how those conditions and how the legislation operates. So there is a lot of positive there. It is just some of these fundamental issues, without actually testing how they will work in practice and at the coalface and how business systems have to change, how the culture has to change in DA. As to how that actually works, we need to actually understand how the full picture will operate because there are some significant risks and unknown budget implications for local government. If there is a full exposure for offsets and refunds to councils, that is something that local governments cannot budget for, so there is an unknown figure there and that is the significant risk that we are trying to raise.

Ms MILLARD: So there is some good framework in place. We are a little bit further down the track so this is a good time to actually start reviewing all of this as well, I would say, because this sort of all links up together.

Mr Hannan: My understanding is that, yes, the bill has been structured so that it will transition into the new planning act and it has been redrafted with that intent.

Mr MULHERIN: How does the Local Government Association respond to suggestions that the current negotiation process between councils and developers for the delineation of trunk and non-trunk infrastructure is slanted towards councils?

Mr Hoffman: It is a negotiation between the parties to reach a conclusion. If a conclusion is not reached that is agreed to by the parties, particularly the applicant, they do have a right of appeal, and that is as it should be. We are yet to understand why that appeal process is deemed to be not working appropriately. That is the point at question here. It exists, it is used. What is the evidence that it has failed and needs to be changed dramatically, or changed in such a way as proposed in the bill that will have the consequences for local government that we have identified?

Mr MULHERIN: But you still hear from developers saying it is slanted towards council and that they have to take councils to the Planning and Environment Court to get a decision. Is that common practice or is it—

Mr Hoffman: I think you need to look at the number of decisions given and the number that find their way to the courts. I cannot answer that, but that will be the demonstration of whether the system, in terms of the negotiation process between councils and developers, works or whether it has failed and it requires more than an appropriate number to be resolved through a dispute resolution process.

ACTING CHAIR: Mr Hoffman, do you have a figure on that? Is there a general figure on what percentage wind up in the Planning and Environment Court?

Mr Hoffman: No, I do not but I am happy to attempt to provide you with that information.

Mr MULHERIN: Because local government tell me there are fewer and fewer matters going to the Planning and Environment Court, but developers are saying that they have had to use that process to bring council to get a fair decision.

Mr Hoffman: I am more than happy to attempt to provide information on it. That would be a point of evidence as to whether the system is working or not.

Mr MULHERIN: It would be interesting. Just on the Priority Development Infrastructure Co-investment Program, can you advise the committee on what size the program would need to be to convince councils to adopt the fair value charge? You are saying that the previous government looked at these charges and no-one was happy. The developers were not happy, local government was not happy, they met somewhere in the middle. You have said in your opening statement that in real terms since 2011 you are eight per cent worse off, even though governments just automatically impose 3.5 per cent on their own charges. What would be the size of that program to convince you to go down that path? It is only a loan program, isn't it? It is not a grant program?

Mr Hoffman: My observation is the uncertainties in relation to the co-investment program as proposed need to be resolved before an informed decision can be made by councils as to whether to adopt the fair value charges or not. The absence of clarity around the amount of money that may be available to be bid for and the terms and conditions in which individual funding arrangements apply makes the assessment of a change incredibly difficult. Obviously, there are councils that do not have their current charges set above what the fair value charge is proposed to be and for them the decision is relatively easy, but for those who are not in that situation—

Mr MULHERIN: How many councils would be in that situation, and are they growth councils?

Mr Hoffman: I am trying to remember the figures that we assessed—identifying roughly what we would call 17 or thereabouts growth councils which involve SEQ councils and the major centres along the coast. I will have to ask my colleague.

ACTING CHAIR: Were they the 17 that responded?

Mr Hoffman: I am not entirely sure. For the purposes of the assessments that we have made and submissions we have presented to the department along the way, we have involved those councils because this is where the issue is and it is at its most significant. No, not all of them charge the maximum charge, but those that do not are in the exception to those that do and the circumstances vary. I am happy to provide you with that information as well.

Mr MULHERIN: That would be good.

ACTING CHAIR: That would be good if you can do that question on notice.

Mr SORENSEN: If we lived in a perfect world, you would actually develop your town in concessions with what is going out. But if you get some developer that goes out further, then the trunk infrastructure you have to get to there is enormous on councils sometimes. That is where a lot of arguments do come into a lot of this as well. That is putting the burden on councils at the end of the day. If somebody develops out of sequence, you have to put in a couple of kilometres of sewer mains, water mains and all the rest of it. A lot of developers do not like having to pay for that infrastructure to get to there, but it is developing out of sequence altogether. I found that to be some

of the most difficult things to deal with in council when I was in council—who pays for that trunk infrastructure in the first place and how does that developer get reassessed for doing that? How do you see that sort of thing?

Mr Hoffman: I understand the situation you have identified and it has certainly been an issue for many councils. The arrangements at the moment resolve it in one way, and it is our contention that what is proposed in the bill will open that to an even greater level of debate. The significance of that is not solely the issue of potential cost to councils but more the delay that it brings to the process of approvals and the implications of cost transfers from it. That is the issue. We do not want to see the process delayed long, and I know the industry does not. So it is unwise to have mechanisms that create that situation or exacerbate it more.

ACTING CHAIR: We are almost out of time. We have two more questions. We will go to Mr Hart and then Mr Mulherin.

Mr HART: Just on that very subject, Mr Hoffmann, I note that in your submission you raise concerns about the definition of existing infrastructure and also how the value of that existing infrastructure is assessed. You said they have concern that we are moving to actual cost or the asset register figure, instead of what it might cost to build right here and right now using new techniques. Can you just explain what your issue there is?

Mr Hoffman: Luke can answer that one.

Mr Hannan: Thank you for the question. First and foremost regarding the definition of establishment cost and how you actually calculate existing infrastructure, we have raised the question of why that is continuing to actually be included in the act because we are moving away from the infrastructure charges schedule methodology where you use the existing and the future values. We cannot see why the existing infrastructure definition has been retained and for what purpose.

Mr HART: What about the actual valuation process?

Mr Hannan: The valuation process—

Mr HART: I guess the question is: do you think developers should be charged for what it actually cost at the time it was built or what it would cost to build now?

Mr Hannan: Sorry, I am not entirely following. Could you please repeat the question?

Mr HART: I think your submission questioned the change from the present system where you work out what a piece of infrastructure would cost to build now versus what the government is proposing in this legislation, that it be valued on what is in your asset register—so what it actually cost plus depreciation.

Mr Hannan: Again, I think we needed to query why it is included. That was our first question. Then we queried why the change actually has occurred. So we are looking for clarification from the department as to why that definition has been changed but also why it has been retained from the previous legislation.

ACTING CHAIR: I am conscious of time, Mr Mulherin.

Mr MULHERIN: Mr Hoffmann, in your submission on page 4 at point 58 you advised that, at the time an infrastructure charge notice is issued, it may not be possible to determine the precise amount of the offset. Can you give a practical example of this?

Mr Hoffman: That goes to the heart of the point I made earlier about the timing of the approval process and the mechanism by which the offsets are determined. To us there is a lack of clarity as to when that process of seeking to resolve credits and offsets occurs. It can, as we understand it, occur later in the process. With the cost implications unknown, that is the problem.

ACTING CHAIR: Understood, and there is the budgetary risk. Time has now expired. I thank you for your attendance here today. I might remind you that the committee would appreciate it if the answers to any questions taken on notice could be provided by close of business Thursday, 22 May 2014. I understand that that is a tight time frame, but we would appreciate that.

MOUNTFORD, Mr Christopher, Deputy Executive Director, Property Council of Australia

ACTING CHAIR: I now welcome representatives from the Property Council of Australia. Would you like to make an opening statement?

Mr Mountford: Yes, thank you. Firstly I would like to thank committee for the opportunity to provide feedback on the bill, particularly given the short time frames and noting the challenges that that creates. I think it is also important from our perspective that we acknowledge the work of the department in this space over the last 18 months. The Property Council, along with other stakeholders, were involved in, I think, around 13 workshops—each went for about two hours—where we went through and nutted out a lot of these issues that are flowing through in the bill. There was a discussion paper released towards the middle of last year, and there have been multiple opportunities for stakeholders to provide written comment along the way as well. There is appreciation from our organisation that departmental staff have made themselves available to come and speak to our members and do a whole range of other things. Certainly it has been a very open and transparent engagement process from our point of view. That is not necessarily to say that we are 100 per cent happy with the outcome.

From our point of view there are really two aspects of the reform package: firstly, there are some of the issues that are addressed specifically within the bill and the amendments that have been proposed to SPA, and then there is the fair value charging framework and the associated priority development infrastructure co-investment model. Both of these are of equal importance to the property sector. The bill does not deal with the fair value charging and co-investment model specifically but, given its significance, I thought I would touch on it briefly in my opening remarks.

It is this aspect of the overall reform program that currently is the most uncertain and is likely to have the potential to embed the most significant inequities across the state. Through the fair value framework, the state has identified the suite of essential infrastructure that is required to accommodate growth and development. The state has identified the average cost per house and per square metre of non-residential development that should be charged by councils to fully recoup the costs for that infrastructure. That is what the fair value charges are. So in our mind that means that they represent 100 per cent cost recovery for the essential infrastructure required for growth and development, noting that obviously the local government holds a different view.

The state is, in our view, clearly demonstrating that the cost to providing this essential infrastructure is actually below what the current capped amounts are through the essential infrastructure list. For example, a retirement village independent living unit should actually be charged, in our view, $7,000 less than the current capped maximum charge to cover the cost of the infrastructure that it requires. Unfortunately the state has decided to allow councils to continue this overcharging, so it has not corrected the charging categories. Even the phrase ‘fair value’ suggests that in fact the current cap is in some way unfair to the industry. However, we do recognise that the fair value framework provides the opportunity for councils and the development industry to seek co-investment from the state for particular trunk infrastructure. Clearly this is being used as a carrot to try to encourage councils to adopt the fair value charging regime. But, without knowing how much is in the funding bucket, the co-investment rules or the expected rate of return the state is seeking, we remain unconvinced of the strength of this part of the reform package.

In relation to the elements specifically addressed in the bill, we are supportive of the intent of almost all of the changes that are being proposed. They seek to stop, or at the very least reduce, the misuse or misapplication of the infrastructure charges framework by local government. I would particularly like to highlight our support for standardising and mandating credits for existing lawful use rights; clarifying that a local government or water distributor-retailer cannot force an applicant into an infrastructure agreement via a condition of development approval; increasing the scope of appeal rights as they relate to infrastructure conditions; requiring infrastructure charges notices to state how the levied charge has been calculated, what the offset or refund is and reasons for the decision; mandating cross-crediting and refunds; providing an avenue for an applicant to have infrastructure ‘deemed’ trunk; and, finally, the ability of the applicant to compel a council or water distributor-retailer to recalculate the establishment cost for a particular item for the purpose of determining an offset or refund.

However, as I identified in our submission, we do see some loopholes in the drafting which we feel will be exploited by some councils to circumvent the intent of these amendments. With some minor changes to the bill in line with those that we have identified in our submission, we believe the intent of the amendments will be more fully delivered.

Finally, I mentioned earlier that the current framework is often misused or misapplied by local governments. I think it is actually fair to say in part this is because the framework is often misunderstood both by local governments and by the development industry. One of the challenges is that it is so complex. It aims to try to identify and plan out long-term trunk infrastructure and growth for a local government area and then somehow try to boil that down to what an individual developer should build and should be charged to pay for on their specific development. That is a really complex process and it is quite hard to account for. Ultimately, I think with all the best effort in the world the plan is not necessarily what is always going to be delivered because of market dynamics and changes and a whole range of other things. So the linkage is never as clear-cut as we would hope.

So, with that in mind, we have, in our submission and to the department, specifically highlighted that there is a significant amount of guidance material that will be needed to support the implementation of the new framework. It will be critical in ensuring a consistent application of the framework across the entire state. That is all I have in the way of opening comments. Thank you for the opportunity and I look forward to taking any questions you may have.

ACTING CHAIR: Thank you. You said that retirement villages were $7,000 overcharged. Is that per unit?

Mr Mountford: Yes, that is right. So effectively through the fair value charges schedule—

ACTING CHAIR: Under the square metre framework?

Mr Mountford: On a per dwelling framework. In essence, for residential type uses—so for houses, retirement villages, short-term accommodation—it is a per dwelling type of charge. Then for non-residential uses—shopping centres, commercial, industrial—it is a per square metre charge.

Mr MULHERIN: Can you give an example, in relation to the comment you made in your opening statement, where councils abuse infrastructure charges?

Mr Mountford: A good example is probably some of the challenges around existing lawful use rights. We have certainly had examples from our members. The theory is that, if you have, for example, a dwelling on a block of land and you then want to split that into two blocks of land, obviously the existing house has already paid its infrastructure contribution or the infrastructure exists for it and therefore there should be no charge levied against that block, so you would only have a charge levied for the additional block. What we quite often see—not often see but sometimes see—is councils taking existing lawful use to a very, very narrow definition. For example, if no-one had been living in the house for the last six months, some councils would deem that that is not being used and therefore would seek to charge two lots of $28,000. That is probably a simplistic example of what generally occurs on fairly significant sites. But that is a type of gaming that we sometimes see of the system.

Mr HART: Are those sorts of problems rectified legally?

Mr Mountford: I think that is why, in our view, the two elements of the bill deliver: firstly, a tightening of some of these rules—to try to provide clarity about the fact that that is what you should be doing and therefore to comply with the law you will—is important, and, secondly, the expansion of the appeal rights are important similarly from our point of view to ensure that, for example, where a local government has not identified something as trunk infrastructure and is not acknowledging that that should be trunk infrastructure and therefore offset and refunded, there are appeal rights enabled in that space.

Mr SORENSEN: A development on that side would not be good.

Mr Mountford: Again, I use that as a fairly simplistic example. A more pertinent example might be an old school site that has been converted to residential uses.

Mr SORENSEN: You talked about loopholes in the legislation. It is that some councils will use those loopholes. Can you give us an example of some of those loopholes?

Mr Mountford: Yes. I think, if you look at the framework as a whole, effectively we have local government infrastructure plans where councils are asked to identify what trunk infrastructure they believe they need to service growth. Councils do that and I think the vast majority of them do it with their best endeavours. When you boil that down to an individual development level, there may have been a piece of infrastructure that was missed in that plan or things are not exactly occurring in line with that plan actually on the ground. So a developer would be conditioned to provide a piece of infrastructure that is trunk infrastructure, but because it is not in the local government plan the council does not consider it to be trunk infrastructure and therefore will not provide the offset or the refund for that.

I guess in our view what we would like to see is really clear rules about what is trunk infrastructure and what is non-trunk infrastructure because then a developer can identify 'What are my costs likely to be before I even buy the block of land? I know that if there is an unexpected trunk infrastructure condition that is placed on me that will be credited through to me and refunded, so that takes that financial risk out of it.' So it is in a lot of the nuance of the system that we see that there is not necessarily always deliberate action to try to mislead a developer: sometimes it just occurs and sometimes it is deliberate.

ACTING CHAIR: I suppose it comes back to what Mr Hoffman said in relation to understanding what your up-front costs are going to be prior to kick-starting that development. I think herein lies the problem.

Mr Mountford: That is right.

ACTING CHAIR: The argument then starts as to who determines what trunk infrastructure and non-trunk infrastructure is and that is always going to be a tough one. Mr Hart?

Mr HART: With the move to local government infrastructure plans, what is your experience with local government? Are their plans sufficiently detailed for a developer to be able to see what trunk infrastructure is covered by that plan?

Mr Mountford: I think it varies depending on the capacity of the council and where they are at in the process. There are some big councils that have a high level of internal capability and capacity to deliver quite detailed plans and do excellent consultation processes. There are other smaller councils that do not necessarily have that capacity or historically have not invested in developing that material. So it is a bit hit and miss depending on the council, to be honest.

Mr MULHERIN: In your submission you stated that councils have all the power in relation to fair value charges. Is that a bit of a misnomer when the fair value charges and the priority development co-investment program is really an incentive program? Councils will only adopt the fair value charges if they receive adequate investment funding from the priority development co-investment program, and it depends on their level of debt too, of course, whether they will be able to afford to co-invest. I put it to you that councils really have very little power under this arrangement.

Mr Mountford: I think there are certainly elements of the co-investment funding model that need to be brought forward so that everyone can make an informed decision. I will give you an example of where we fear that that model leaves the developer out of, in essence, a fair regime. Our understanding is that both councils and developers will be able to apply for co-investment through the fund, but co-investment will only be made in local government areas where the local government has adopted the fair value charge. So, if I am a developer and I am in a local government area that has not adopted the fair value charge I cannot apply for co-investment. Effectively they are hit with a double whammy because they pay the higher per lot charge, or per square metre charge, and cannot seek any funding from the state. So to an extent our view is that the council is holding the power over whether or not the developer can actually seek state funding for the infrastructure that they build. That is a slight anomaly of the system. Effectively the developer's bottom line is tied to the council's decision.

Mr MULHERIN: You could also see areas where there has been high growth. And not every local government area is the same, particularly when it comes to the topography. In some of the coastal areas the cost of development is higher because of drainage and so forth. In councils that already have a big debt, even if the co-investment program was attractive, the debt levels are such that they do not want to increase debt and will not be able to go down that path of being part of the fair value charges.

Mr Mountford: One of the challenges that we see with this debate in total is that we tend to only talk about costs. We do not really assess the benefits of development and try to account for those who correctly understand the overall implication of the investment decision that is being made both by the developer and by the council. If I can give you an example, if we took a 900-lot subdivision as an example and within seven years of that starting—probably a two year construction period and five years of it being in existence—not only does it provide housing for 900 families, it creates 500 jobs during construction, it contributes about $120 million to gross regional product, provides about $6.7 million in new rates revenue for the local government and, from a state government point of view, would generate about $22 million in additional tax revenue through stamp duty, payroll tax and a whole range of other things. In our mind, when we are talking about what are the costs of providing this infrastructure to facilitate the growth, we should also be thinking, well, what are the long-term paybacks that are coming to all levels of government—state, local and

Commonwealth—through the additional tax revenue and employment benefits that generate from that too. If we took a more holistic view of what the task at hand is, take an approach more aligned perhaps with Victoria where they have much lower up-front costs and they call them developer contributions, not infrastructure charges, because they want the developer to make a contribution, but they actually have an economic development strategy that says that is where we want the growth to go and so we are going to promote it into those areas. Sometimes it is the nature of how big a frame you look through the issue in.

ACTING CHAIR: Just as a point of clarification, Mr Mulherin, were you talking about steep land, overlays, soil conditions and the like?

Mr MULHERIN: Yes. Where I come from in the Mackay region it is just like a big soup bowl. The cost of infrastructure is high because of the drainage. There are areas that are only two or three feet above sea level. That is different to Rockhampton or Townsville. One model does not fit all.

Mr Mountford: I think that is part of the challenge of any infrastructure charging system in that if we want certainty for both the council and the developer up front about costs, you cannot always take into consideration all of those site specific differences when developing the charge and so you end up with a standard regime for the state which means that for some councils it is probably well below the cap, for others it might be the closest fit and I think that is just the nature of the system.

Mr MULHERIN: With this priority development co-investment program and councils that do not sign up to the fair value charges, the market will determine where the investment will go in the end, will it not?

Mr Mountford: That is right.

ACTING CHAIR: So it will be driven by market forces.

Mr Mountford: That is right. The reality is that the infrastructure charge is only one point of that decision for the developer. It is also land cost and a whole range of other things that need to be taken into consideration. But the infrastructure charge is a significant portion of a development cost and therefore is part of the decision making process.

Mr KATTER: Just following up on that, I am interested to hear your opinion on this. Obviously there is always tension between the developer and the council about who is responsible for what charges. I am just interested in how that plays out in the market. Let us talk about housing. If you are talking about that Victorian example where they are encouraging development in one area and it falls to the benefit of the developer and the larger burden of the cost is on the taxpayer or the ratepayer, how does that effect price? It may stimulate the development, but is the market fluid enough that it translates into cheaper housing for the consumer or is the price fairly rigid and does not respond to that extra supply or that extra development? I wonder how that trickles down to the consumer in the end. It might stimulate the development, but is that enough to actually affect the price in the end?

Mr Mountford: The feedback from our members, particularly over the last five years, is that price point has been critical in whether or not your product is able to be sold. There has been a huge amount of work going into reducing your cost base to try to hit the price point that the market will accept. That is part of the drive for smaller lot housing, for faster and cheaper building products, to try to get those costs down so that you can open up a much broader part of the market. Certainly our view is that infrastructure charges are a cost like any other cost to a building, they therefore affect the feasibility of developing that building in the same way as the bricks and mortar do, as the concrete does, as everything else does. If you get to a point where the costs ratchet up above the point at which the market will accept, it is not feasible. If you can keep the costs below the point that the market will accept, the project is feasible. The reality is that the feasibility is about what banks are willing to finance and that is a significant margin at the moment. They want to see that there is profit to ensure that it goes ahead. It is quite often said, 'Well, if it has dropped from $28,000 to zero we will not see house prices drop by $28,000.' My view is that if you look at it the other way, if you put a $28,000 cost on that house, I can guarantee you that that $28,000 cost is passed on. If it is in there, it is in there.

ACTING CHAIR: It reduces the bottom line.

Mr HART: You raised an issue in your submission about refunds and the timing of those refunds. Do you think that there should be a specific time limit put on the negotiating process and the actual refund and should that be in the bill?

Mr Mountford: We can accept that for very large projects the money that will come in to pay for that infrastructure occurs over a period of time and therefore it is acceptable that that repayment is made over a period of time. In an ideal world we would like to see a cap of something like five years in terms of that refund being paid, but perhaps a more palatable solution is that the local government is required to identify the period over which they will make that refund to the developer and then if the developer is not satisfied with that, that that forms part of their opportunity to appeal. That would give perhaps a little bit more flexibility to both parties to reach an agreement about an acceptable time frame.

Ms MILLARD: With regard to the proposed new section 478 to allow an applicant to appeal an infrastructure charge if there is no impact on local authority infrastructure, how often would you expect such an appeal?

Mr Mountford: Hopefully very rarely. The hope is the fact that a council would be required to acknowledge that if a development, for example, deals with its stormwater on site that it would be inappropriate for the local government to charge for the external stormwater impacts of that development. That is effectively what I understand that provision is attempting to achieve. That seems fair and reasonable to us, that if you are not having an impact on the network you should not pay towards the impact. Our hope would be the appeal would be used rarely because councils would acknowledge its intent and deliver upon it.

Mr MULHERIN: On the trunk versus non-trunk infrastructure, in your submission you raise concerns that councils will threaten to delay development applications to dissuade developers to appeal conversion applications for non-trunk infrastructure, however, the appeal process itself can be a delay. Does the property council have any suggestions about the appeal process envisaged by the proposed changes in section 478 of SPA that can be adapted to avoid that unnecessary delay? Time is money, of course.

Mr Mountford: I think what we would like to see is that any appeal or dispute relating to infrastructure conditions, particularly the deeming of trunk infrastructure, is separate to the approval process. Through the approval process the council has agreed that the scale of development is appropriate within the scheme, whatever that be, but has conditions about particular infrastructure that needs to be built. If the developer chooses to seek to have a piece of infrastructure that has been conditioned as non-trunk converted to trunk they should be able to appeal that process, but if they would like to get on with the development they should be able to do that also. It is their financial risk effectively. If they go through the appeal process and they lose and they are required to bear the cost of that infrastructure that is their cost and therefore there is not necessarily a reason why we would see that conversion process needing to slow down the approval process.

ACTING CHAIR: There being no further questions we will close the session. I thank you for your attendance here today, Mr Mountford.

Mr Mountford: Thank you.

MACLAINE, Mr Duncan, Director, Policy and Economic Research, Urban Development Institute of Australia (Queensland)

ACTING CHAIR: Welcome. Would you like to make an opening statement?

Mr Maclaine: I might start by saying who the UDIA are. We are a national not-for-profit body. We are the peak body representing the development industry. Queensland is the largest of the state bodies in Australia. We represent property developers right from the small developers—mum-and-dad developers—right through to the large listed companies. We have a strong regional presence. We have 12 branches throughout Queensland and that ensures that we are across the local issues and represent the development industry at that local level. We would like to start by saying that the consultation process that was run by the department was excellent.

ACTING CHAIR: You are referring to the 13 workshops?

Mr Maclaine: Yes, that is right. The workshops were run over a long period of time. We were provided with information and different policy options that we could debate and put forward various arguments. I think that process was very open and there was a lot of goodwill in the room. So I just wanted to say that this was an excellent consultation process.

In terms of the bill itself, of course, this package of reforms has the legislative and the non-legislative matters. In terms of the legislative matters, we welcome many of the aspects of the bill. They will provide certainty for the industry and, in some cases, lower costs for developers and, in turn, the new home buyer. In the end, it is the new home buyer who pays the infrastructure charge. The evidence shows, and some of the research out there shows, that not just the full cost but an almost 1.5 to one passes through into the final cost of a house and land package because of the timing of the payment and the funding costs and also the risks associated with the project. Then, if someone takes on a mortgage to pay that component of the house price that is affected by the infrastructure charge, you are looking at perhaps $90,000 to $100,000 over the life of a mortgage paid by potentially a first home buyer. So the greater certainty in the bill with respect to credits and offsets and conditioning and the ability to have non-trunk infrastructure converted to trunk will provide greater certainty, will make some projects more feasible.

Having said that, I think that there are some improvements that can be made to the bill. With respect to the non-legislative changes, we are disappointed that there has not been a mandatory reduction in charges. We believe that they are too high. They place an unfair burden on a small section of a community. There is a lot of intergenerational inequity in the sense that the previous generation paid either little or no charges when land prices were low and there was plentiful supply. The new generation is funding 100 per cent potentially of the cost of infrastructure that will last 30 years upfront. But having said that, we welcome the intention of the state to co-invest in infrastructure. We look forward to more details about how that may work.

The fair value charges schedule, I know a lot of work went into that, a lot of modelling about what is the scope of infrastructure that needs to be provided as part of a development. We think that that project could go further in the sense that one half of the equation is being looked at and that is the scope of infrastructure. The other half is the design standards and the standard of infrastructure that is provided. Over time, as expectations grow, the standard and the design standard—the width of roads, the number of bike paths, the quality of the stormwater run-off—moves up over time. Yes, we would all love those kinds of things, but we have reached a point, I believe, where the cost is too high for the new home buyer to bear in many instances. So the fair value schedule is great. We now need to look at the design standards and see if we can get those values down to a more competitive level relative to other jurisdictions in Australia. So that is my opening statement.

ACTING CHAIR: Would that not reflect on choices as to where you wanted to live? If you wanted to live in a new development where the roads were wide and they provided lots of parks and green spaces, that ultimately would be the decision of the purchaser.

Mr Maclaine: Yes. At the moment there are many cases where there is no scope for providing that diversity, because the local infrastructure plan and standard and charges require that that standard of infrastructure be provided everywhere and anywhere that development occurs. Now, of course, we have to have reasonable standards. The community expects that. But in our view, the standards have become excessive and, in many cases, yes, the developer may even want to deliver over and above the mandated standard. That would be a commercial choice of theirs. That would be at the home buyer's additional cost. But the minimum standard being imposed through local planning schemes and LGIPs does shut a portion of the market out of buying a new home.

ACTING CHAIR: That is understood, but it also could be argued that the minimum standard would not make other people happy—the width of roads and all of that sort of stuff.

Mr MULHERIN: You have kerbing and channelling.

ACTING CHAIR: So are there any questions from the table?

Mr HART: Mr Maclaine, I take your point about the current generation having to pay infrastructure costs now that may last generations. What is the solution to that, because I cannot see one?

Mr Maclaine: There are many ideas out there on what the solutions might be. The politics of them are probably not easy. Given that the community does benefit in many cases from developments—the beautiful green spaces that are provided are not just used by the residents who live there but others nearby may travel to use those, the uplift in the land values around new developments—one of the solutions I believe is that the cost needs to be shared more equitably in terms of the general revenue base and contribution from new homebuyers and the developer. I think the balance in the last 20 to 30 years has swung too far towards upfront funding by the first person who moves into a home. So a greater reliance on the general revenue sources.

Other solutions—I acknowledge that local government only gets a very small share of the nation's revenue sources. There is a lot of debate out there at the moment about federal-state relations and responsibilities. I think for a longer-term solution we really need to look at how other sources of revenue can incentivise local government and ensure that the cost is borne more fairly across the community.

Mr MULHERIN: In your submission you said that some of the items on the essential infrastructure list relating to the fair value schedule are not, in fact, essential. Could you please provide some examples of what you consider to be not, in fact, essential?

Mr Maclaine: I have a couple of examples that our members have provided to us to give you a flavour. One example might be where a developer is required to do some on-site treatment and management of stormwater—both the quality and the quantity of that stormwater—but then the infrastructure charge that everyone pays is based on making a contribution to stormwater quality and quantity across the wider network even though the developer has either been required by the local planning scheme or by a condition to deal with that matter on site. I know in our submission our suggestion was that it should be one or the other: either you deal with it off site or on site, but not pay a contribution for both.

ACTING CHAIR: Can I just get an example? You are talking about the treatment of water. You are obviously talking about run-off water.

Mr Maclaine: Yes, and the quality of that run-off. I am not an engineer, but a non-worsening condition is often imposed on a development on site, or a developer may feel that it is more cost effective to deal with it on site rather than off site but does not have that flexibility to do it on site and then not pay the charge.

Another example is some higher-order roads. Yes, a new development may place some demand on higher-order roads but, really, we believe that the nexus between that development and that higher-order road is very weak. I know the Productivity Commission and others who have written about this topic say that where the nexus is weak it should be funded through other sources of revenue and not on a direct charge on the development.

Higher order roads is one. Another example that has come up many times in the workshops is, for example, bike paths. You are required to provide a bike path on road. There is a requirement to provide one along the road next to the path and perhaps even to provide bike lanes through a nearby park. So we feel that that is not really essential for development. A developer may wish to provide those things and if they do it is at their own costs, but it should not be a minimum requirement to provide that cumulative infrastructure for anyone doing development. So I guess they are a few examples without being an engineer and going into the details of specifications and so on.

Mr MULHERIN: In terms of another issue you raised in your submission about a reduction in the maximum charges, you call for maximum charges to be reduced significantly—reductions of 25 per cent for greenfield developments in South-East Queensland and all residential developments outside of SEQ and 40 per cent for infill developments in South-East Queensland. On what basis do you call for these reductions in relation to the actual cost of councils and the distributor-retailer providing infrastructure?

Mr Maclaine: I guess from the outset one of the policy objectives of looking at this topic was development feasibility and local government sustainability. Equity and certainty were other important considerations. If you took a $28,000 charge and applied that in a regional part of Queensland, say somewhere on the Fraser Coast, where the raw land price for a block of land before you do any work on it might be, say, $100,000 and then you take the same $28,000 charge in South-East Queensland where the land price is $300,000, the impact on development feasibility is greater even though the charge is the same because the price points that you would be targeting in a regional area would be lower. Things like stamp duty and rates are applied on a proportional basis, so the higher the value of the transaction or the asset the more you pay. When we have a capped charge regime and there was a bit of a default up to that capped charge or a little bit below, the impact on development feasibility outside of South-East Queensland was far greater. A lot of feedback I get from our members is from regional Queensland and the impact on feasibility. So, yes, the cost of delivery of infrastructure may not be different and may even in some cases be in fact more outside of SEQ, but if development feasibility and housing supply is one of the considerations some recognition of that, we believe, should be built into the system. In fact, that is what the Victorian government has done with a metro and non-metro charge.

Mr MULHERIN: But you are saying that some of this infrastructure cost outside of SEQ could be greater than SEQ.

Mr Maclaine: In some cases.

Mr MULHERIN: These councils may have two million or 2.5 million people living in SEQ whereas regional councils along the coast range from about 60,000 or 70,000 people, but it comes at a cost to council.

Mr Maclaine: I acknowledge that and I believe that is why other revenue sources and assistance at the state level would be required if there was a differentiation in charges between SEQ—

Mr MULHERIN: Because they have not got the same rate base to recoup the money over time.

Mr Maclaine: That is right.

Mr MULHERIN: That is the real issue and it goes to the level of indebtedness of those councils. So these current investment schemes, if they adopt the fair value, may not be attractive because of the level of debt. What would you suggest there? Should it be more of a grant scheme?

Mr Maclaine: I do know in the past there have been the subsidy schemes. If the policy decision was made by the state, which we believe it should be, to recognise the same charge in an area where housing costs are lower will impact on development activity, then I think the state should be providing that additional assistance to councils to cover any gap that they might not be able to cover through their own internal revenue sources.

ACTING CHAIR: So you are suggesting there should be a benefit for those sites that would be deemed as classic infill?

Mr Maclaine: Yes. I guess in terms of the argument for lower charges for infill, infill in many instances can be cheaper to deliver. There are some cases where it is not. A major sewer upgrade, for example, at Woolloongabba has a very high and lumpy cost, but there are other major benefits from encouraging infill. For example, if more development is occurring around existing transport networks, there is a saving to the energy companies and the state government through road infrastructure and greater usage of existing public transport networks that reduces the subsidy the state has to pay to cover the cost of public transport. So I think there is a strong public policy reason for why you may want to have a different charge for infill versus greenfield. Both need to be delivered. Both options need to be made available for consumers. The regional plans do set targets for the split between the two, but in our view I think there is a role for using that lever to encourage infill.

ACTING CHAIR: So you are saying there should be a methodology?

Mr Maclaine: Yes.

Mr HART: Mr Maclaine, on page 12 of your submission there is a paragraph titled 'Transfer of land for parks and community purposes'. You raise an issue about stamp duty. Can you just expand on that?

Mr Maclaine: Page 12? Is this page 12 of the appendix?

Mr HART: That is a good question.

Mr Maclaine: It looks like it. It is. I have just found it. It is in the appendix of the submission. This was our submission to the discussion paper of 2013. The issue has been raised by our members on a number of occasions. When parkland is provided to council, there may be a notional value placed on that or a low value because it is to be used as parkland. However, my understanding is that because it is not set in stone, so to speak, that it must always be used for parkland, valuers and the treasury department will base stamp duty based on its market value, not the value that may have been placed on it by a local government for use as parkland. Because local government is not government under the Duties Act, stamp duty will be payable on that transfer even if there was no consideration given or a notional consideration given. So that has been an issue that has been brought up a number of times by our members and it is in light of changes of practices in councils with the way that parkland is donated and provided on the development industry.

Ms MILLARD: With regard to the ULDA project out at Fitzgibbon Chase, you would be aware of that one, I imagine?

Mr Maclaine: Yes.

Ms MILLARD: Are there any lessons, do you think, that we as a committee can learn from what is happening with that through its different stages?

Mr Maclaine: Just from an infrastructure charging perspective?

Ms MILLARD: Yes.

Mr Maclaine: Having the ULDA and now PDAs has allowed almost a form of experimentation in terms of different rules and different arrangements for the payment of infrastructure or the delivery of infrastructure than in the mainstream system, and that is always of benefit I believe in public policy to see how different systems might work. I believe the outcomes in Fitzgibbon have been excellent in terms of some of the flexibility, for example, to allow for area to be made available for parkland but also serves a function for flooding and drainage.

ACTING CHAIR: Swale drains.

Mr Maclaine: I am not too sure, but I am aware that there is the flexibility to be able to do that. The outcomes I think are excellent. From putting that small-lot product out there, that opens up the market for more buyers. From an infrastructure charges perspective, I am not across exactly how they were levied in that area different to other areas, but I do know that there was greater flexibility in terms of stormwater provision of parkland that generated some efficiencies.

Ms MILLARD: Just to comment on that, that development is in my electorate and during stage 1 there were certainly some challenges and certainly some issues that we had to deal with, and some of those were along the lines of when you said standards have become excessive. The standards were probably not quite where people wanted them to be. Although they certainly were not excessive, we needed to address issues such as road widening for the next stages et cetera and extra car parking spaces and facilities. I just wanted to mention that.

ACTING CHAIR: I just want to state that you are seeing more developments utilising the parkland and a swale drain to treat water that runs off.

Mr Maclaine: Yes, that is happening in some places.

ACTING CHAIR: As there are no further questions, I will close this session. I thank you for your attendance. We will now take a short break until 11.45.

Proceedings suspended from 11.22 am to 11.45 am

BRAGG, Ms Jo-Anne, Principal Solicitor, Environmental Defenders Office (Queensland)

KOROGLU, Ms Rana, Solicitor, Environmental Defenders Office (Queensland)

ACTING CHAIR: I now welcome Ms Jo-Anne Bragg and Ms Rana Koroglu from the Environmental Defenders Office Queensland.

Ms Bragg: Jo-Anne Bragg, Principal Solicitor, Environmental Defenders Office.

Ms Koroglu: Rana Koroglu, Solicitor, Environmental Defenders Office Queensland.

ACTING CHAIR: Welcome. Would you like to make an opening statement?

Ms Bragg: Thank you. I gather that we have ample time for our statement. We are not restricted to the five minutes on this occasion?

ACTING CHAIR: No, you are all good.

Ms Bragg: Firstly, I say thank you to the committee for inviting the Environmental Defenders Office Queensland to appear at the inquiry. We appreciate the chance to engage with you and to put our views on the public record. As you may be aware, we are a non-profit, community based legal centre. Both Rana and I are practising solicitors. We continue to provide free legal advice to both urban and rural Queenslanders on environmental planning and resources issues. Nowadays we have almost as many clients who are graziers or rural people as we do city based conservationists. So there has been quite a change in who we help. You may well be aware of a key publication of ours regarding community rights in relation to mining and gas. That has been a prominent publication and is much in demand.

Today we are not proposing to speak about all of the elements of the particular bill. We are interested in part of the bill. We are particularly interested in the changes on environmental coordination that we understand are proposed as a result of the proposed bilateral agreement with the Commonwealth in relation to delegation of approval powers relating to Commonwealth environmental legislation. What we would like to do is to table more detailed documents than what we were able to get done in the week on Friday. We did email those to your research director, but we also have spare copies here to table if that is convenient. Have you already got those?

ACTING CHAIR: That would be good, thank you.

Ms Bragg: Would you like us to table one for the record?

Mr MULHERIN: Yes, table them please.

ACTING CHAIR: Yes.

Ms Bragg: Maybe just table one and then we have a few spare copies.

Mr MULHERIN: Just one copy will be fine.

ACTING CHAIR: Thank you.

Ms Bragg: We would now like to progress through our main points in relation to the bill. In the summary we had seven main points and two observations. I would now like to proceed through those seven main points. My colleague and I will share the retelling of our issues. It is more interesting for you to have two different people present. We also have slightly different areas of experience.

The first issue is that one of the features of the Commonwealth environmental legislation, the Environment Protection and Biodiversity Conservation Act, or EPBC for short, is that it sets out a series of duties and responsibilities on decision makers to protect matters of national environmental significance. So if you look in that Commonwealth legislation, as we do, there are quite clear duties. For example, the decision maker must not act inconsistently with Australia's obligations under the World Heritage Convention. There are other duties such as that the decision maker must not act inconsistently with Australia's obligations under an international convention for protecting wetlands known as the Ramsar convention. Also, the decision maker must not act inconsistently with Australia's obligations under the biodiversity convention and the decision maker must at least take into account the principles of ecologically sustainable development. You probably know those, but essentially ecologically sustainable development, or ESD, is all about trying to balance, environment, economics and social issues. These are features of the Commonwealth legislation.

When we looked in the amendments to the State Development and Public Works Organisation Act and we looked in this bill in the section of environmental coordination we were most aghast that those types of clear obligations on the decision maker were not present at all. This

is a serious omission. If Queensland is meant to be doing the job of the Commonwealth under the proposed approvals bilateral agreement those highly specific obligations should be reflected in the Queensland State Development and Public Works Organisation Act. We have the detail of that here in our submission. I will not go on a lot more about that. That is a very significant point and we would propose that a solution is not hard; you just reflect those duties in the State Development and Public Works Organisation Act—easy.

Another really crucial point—and this is a point that our office has made for many years—is that there is a great difficulty in Queensland with the Office of the Coordinator-General. That is because on one hand the Coordinator-General is expected to lead in promoting economic development. There is nothing wrong with that. It is good to have parts of the government actively promoting economic development for the state. But on the other hand, that same office is meant to be overseeing environmental assessments. Now the proposal is that that same person or office be given decision-making and approval powers in relation to the environment. We say the decision maker under state law should mirror what happens at the Commonwealth level. At the Commonwealth level it is not the development minister who decides under the Commonwealth legislation or EPBC act, it is Minister Greg Hunt, the environment minister. That is the part of balancing up the environment and development. We say it should be the Queensland environment minister who makes decisions if there is going to be delegated approval, not the Coordinator-General.

I will talk a little bit more about that one. I have to skip over things because I know we do not have that long. If you look at clause 54W(3), the Coordinator-General is given huge discretion as to its approach to decision making in relation to these Commonwealth matters of national environmental significance like World Heritage Listed species. We say there are not enough limits or criteria for the Coordinator-General, and we have pointed to a few key ones that should be there because they are in the Commonwealth legislation. This is really an issue. We say it should be the environment minister making these decisions if there is going to be an approvals bilateral agreement, not the Coordinator-General.

There are quite a few more dot points there—and I am on page 3. One very important issue if we are to have good decision making and only appropriate people receiving environmental approval is that the bill, the amendments, propose a very limited ability for the decision maker to take into account the proponent's environmental record. I am sure everyone would agree that you do not really want to give an approval to someone with a record of failing to comply with the law, breaches of the law or a bad history. While the Commonwealth legislation does allow for histories of complaints and things of that nature to be taken into account as well as finalised prosecutions, what is proposed here under this legislation is far too narrow. This would allow cowboys to get environmental approvals. We need to reflect the provisions of the Commonwealth legislation here.

It is the same issue when an approval is transferred from one person to another. You do not want to give an approval to an appropriate developer and then find they decide to retire and do not want to do it anymore and they transfer their approval to someone with a bad environmental record. You need to get appropriate provisions in here to make the environmental record relevant and they need to mirror the Commonwealth provisions.

I draw your attention to clause 54W(3) in which too much discretion is given to the Coordinator-General. As we have pointed out, the Coordinator-General's office does plenty of good work, but they have a serious conflict of interest on environmental matters. I might point out, for example, the Traveston Dam case. In that example there were matters of national environmental significance involved; the Queensland government gave it the tick but the Commonwealth government, taking a national approach and being more aware of international obligations, said no. I can see a few nods from the committee members. I think people are pretty well aware of that case. Is that correct?

ACTING CHAIR: I am sorry, Mr Mulherin and I were just having a discussion.

Ms Bragg: That is just an example of the importance of national issues being taken into account, in our view, preferably by the Commonwealth. Certainly we do not think the Coordinator-General with a conflict of interest should be addressing these.

I also draw your attention to another example, which is a *Four Corners* investigation about the Coordinator-General and, in particular, an employee of the Coordinator-General called Simone Marsh. That example is at page 5 of the document that was tabled for the committee. For the record, essentially, in April 2013—

Ms MILLARD: Sorry, before you continue, is it appropriate to be talking about that as it is still being investigated?

Ms Bragg: I believe it is not currently under investigation. In any event, this is a public—it has been on TV.

Ms MILLARD: I know. That is my point.

Ms Bragg: In this particular case the whistleblower, who was Ms Simone Marsh, who had been working at the relevant department, the Coordinator-General's department, revealed that preliminary approval was given to huge coal seam gas projects despite the Coordinator-General—

Mr MULHERIN: Excuse me, that was investigated and the investigator came up with a different view to that of *Four Corners*.

Ms Bragg: It is not whether it was illegal or not; my view is that it was the pressure that was brought to bear on staff. It might not be illegal, but that is a product of the conflict of interest.

ACTING CHAIR: I think we will get back to the bill. I note that you have tabled it. We will certainly look at that. I ask you to stay relevant to the bill.

Ms Bragg: That is an example I have put up. I am not going to comment on the fact that Environmental Defenders Office Queensland was not consulted prior to the bill being tabled other than to say that we are a prominent environmental conservation group in Queensland and we think it is disgraceful that we were not consulted in relation to the bill.

Mr HART: I think you just did.

Ms Bragg: You have got me there, I did just say it. We are not a shrinking violet. People are aware of our office. We have extensive experience. We have run six court cases in the Federal Court under this legislation, five of which were successful for community groups who helped see that the law was enforced. We have a track record in this area and community groups have an excellent track record in running legitimate cases to see the laws enforced. I believe I have now covered the first two items. Do you mind if I check my watch because I am conscious—

ACTING CHAIR: It is 12 noon. You have got 15 minutes.

Ms Bragg: I will just apologise to my colleague for taking a bit too long here. We might have to hurry along, Rana. Would you like to make a few further points?

Ms Koroglu: One of our other concerns is that the bill does not contain the same provisions for public access to information as the Commonwealth legislation. Although some of these provisions appear in the draft approval bilateral agreement, there is no certainty that those provisions are actually enforceable. If public access to information provisions in the draft approval bilateral agreement are not followed it could simply be said that the procedure for an environmental approval under the one-stop shop model has not been followed properly. Therefore, it would have to go through the EPBC Act again if the approval bilateral agreement does not apply—if it has not been followed. That creates a very complicated and confusing situation and it is quite an inefficient process.

Mr MULHERIN: Would it be open for legal challenge?

Ms Koroglu: One of the concerns that we have is that the approval bilateral agreement is between the state and the Commonwealth.

ACTING CHAIR: We might just get your statements and then we will go to questions after that.

Ms Koroglu: Certainly. That is one of the concerns that we have. In the legislation itself there should be the opportunity for public comment on any proposed bilateral project declaration to match the existing rights under the EPBC Act. So it should not simply be in the draft approval bilateral agreement itself.

Another major concern we have is that under the EPBC Act there is a provision which allows community groups or individuals who have a demonstrated interest in the environmental matter to have standing for judicial review. That does not appear in this legislation. Although judicial review is available under the legislation, it does not have the same extended standing that the EPBC Act provides.

That is contrary to a document that the federal government published a few weeks ago called standards for accreditation which says that Queensland laws essentially need to have extended standing for public interest matters. That is at the paragraph 111 of that document. That simply does not appear anywhere in the bill and that is something we are very concerned about.

What that essentially means is that a scientist who has spent years researching and protecting endangered species will not be able to challenge a decision allowing destruction of the species. It means that a mining company can argue that local grazers would not qualify as an aggrieved person under the Judicial Review Act if they have a report that says there will not be any impacts on their groundwater. So without having that extended standing for judicial review it could mean that mining companies can effectively shut out landholders if they simply argue that the action has no impact on them.

We also have concerns about the standing provisions for declarations and enforcement. The provisions in the bill cross-reference to the Environmental Protection Act and standing under the Environmental Protection Act to bring enforcement actions. Those provisions in the Environmental Protection Act with a reference in the bill include people who are acting in the public interest with leave of the court. That is completely shut out of this bill. The bill clearly excludes those people. Again we come back to the issue that it is going to exclude a wide range of people in the community—scientists, community groups and landholders alike.

The bill also lacks any power to reject clearly unacceptable projects. So this creates quite an inefficiency because there is no clear provision in the bill which allows the Coordinator-General to receive an application and see, right from the outset, that the impacts of the project will be clearly unacceptable. Those provisions currently exist in the EPBC Act and they are not reflected in here. That essentially means that the Coordinator-General could make the bilateral project declaration and then have a draft protected matters report undertaken even though they know at the outset that it is clearly unacceptable. That creates huge inefficiencies for everyone—the proponent, the government and the community—in seeking to respond to the draft protected matters report.

Ms Bragg: Just to follow on from what Rana has said, issues such as who is entitled to go to court, who has legal standing, who has public access to information are very important for transparency, accountability and respect for the rule of law. I mentioned that we have run five separate proceedings. On occasion the community decides they want to stand up and see environmental laws enforced if they have not been done properly. That is why we need those legal standing provisions to be there for anyone, be they grazers, a community group or an environmental group. That was part of the deal between the Commonwealth and Queensland governments. It should be reflected here in these amendments.

In terms of a few of the other points we have made, on page 7 we have emphasised that there are weakened obligations on the decision maker when they are making a decision as to whether or not the project should be assessed. This is a very important threshold stage when the project is first brought to the attention of the decision maker. At the moment that is the Commonwealth. They receive something called a referral. There is a preliminary decision made as to whether or not the project needs to be assessed. It is very important.

We need public input at that stage to be built into this bill the same as it is in the Commonwealth legislation and practice at the moment. There needs to be a chance for the public to have their say.

An example of where that works is the Cairns Aquis Resort. The developer said, 'We do not need to be assessed under the Commonwealth legislation.' There were public submissions called for and the Commonwealth decided that this will impact on matters of national environmental significance so it should be assessed. On page 8 we propose that there should be a referral mechanism in there for that early stage similar to what you have in the Commonwealth legislation. It is essential.

One issue that is very important, and again it is back on issues of transparency, accountability and respect for the law, is that if misleading documents are provided to the Commonwealth then that can be an offence under the Commonwealth legislation. However, the provisions in the state development act are far, far narrower and you have to prove actual knowledge—legally it is very hard to prove someone intended something to mislead; it is easier to prove it was misleading. We do need provisions similar to the Commonwealth's on false and misleading information in this act otherwise there will be pressure on public servants and there will be unfair, non-transparent, unaccountable decisions.

We have put an example in here about Abbot Point where there is a Commonwealth investigation on at the moment. We have compared a lack of power in relation to potentially misleading documents in the possession of the Gladstone Ports Corporation just to show the difference in the legislation and why we really need Commonwealth provisions reflected in the state legislation.

Mr MULHERIN: What does the Gladstone Ports Corporation have to do with Abbot Point?

Ms Bragg: It has nothing whatsoever to do with Abbot Point, but it shows how the current State Development and Public Works Organisation Act provisions on misleading documents are too weak. So we need similar provisions to the Commonwealth.

ACTING CHAIR: I understand we have five minutes left. We might throw to questions. Would you like to wind up?

Ms Bragg: I just wanted to compliment Minister Cripps for the good consultation process he has conducted on amendments to the mining legislation. He has put to public comment whether there should be a narrowing of who is allowed to object to mining leases in environmental authorities. He put out a discussion paper. That is excellent because it has allowed very strong views to come in from the rural and urban community to say, 'Do not narrow who is allowed to object. It is a public interest matter.' I got that plug in because it is an important issue. We are ready for questions.

Mr HART: Ms Bragg there is a lot in this legislation. It is very broad. It talks about a lot of things to do with local governments, infrastructure charges, approval processes. Is the Environmental Defenders Office concerned at all about any of the other bits of the legislation? You seem to have a very limited focus on this bit of the legislation which, by the way, was added to the overall legislation at a later date? It was not intended to be in this piece of legislation right from the start.

Ms Bragg: I guess we handle a wide range of different pieces of legislation.

Mr HART: So have you read the rest of the bill?

Ms Bragg: We have read the parts relevant to the bilateral agreement because we consider that is the most outstandingly important section.

Mr HART: So you went straight for that. You have not looked at the rest of the bill?

Ms Bragg: I am sure you will recall that we were given one week.

Mr MULHERIN: We have had the Local Government Association before us and they have not commented on environmental issues. The Environmental Defenders Office is commenting on the environmental aspects of the bill. I think we should let them do that because we have not asked the Property Council or the UDIA to comment on the bilaterals and nor have they.

Ms Koroglu: If I could just add, if we had had more time then perhaps we could have had an opportunity to look at that. There were 160 pages which we had to digest in just one week. Given the opportunity, we would have liked to have looked at that.

ACTING CHAIR: Understood. We are all busy. Are there any other questions from the committee?

Mr MULHERIN: You made reference to the fact that the bill does not meet any of the national environmental standards under this document—

Ms Bragg: That it did not meet several, not all of them. It did not meet a number of them.

Mr MULHERIN: I asked earlier whether the legislation could be legally challenged because it does not meet those standards.

Ms Bragg: Certainly whenever governments rush things through and do not carefully check against the standards, they leave themselves open to challenge.

ACTING CHAIR: I understand your comments, but the question was could it be challenged.

Mr MULHERIN: So if a project was put up and it does not meet the standards for accreditation of environmental approvals and the Coordinator-General has not taken into account the standards in this document would the government leave itself open to a legal challenge that the EPBC Act would then override this legislation?

Ms Bragg: I think broadly speaking the answer is yes, but the Environmental Defenders Office Queensland is looking to see the standards are reflected. We have proposed solutions and suggestions. Let us spend the time to get it better. It is unwise to rush anything like this through.

ACTING CHAIR: I understand that the Environmental Protection and Biodiversity Act provides the minimum standards that must be met for both the bilateral agreement, would you agree?

Ms Bragg: That is certainly where we look. There are also some administrative practices of the Commonwealth which are good things, which I understand are also in the standards.

Ms Koroglu: That is correct.

Mr KATTER: I just need you to expand my knowledge a little bit. It seems to me that you are saying that the Commonwealth standards sit there as a protection over this. You are saying that it is more a cost and inconvenience thing. They can still get captured if there is a breach or a conflict with the development by those Commonwealth standards. But you are saying that, if this is not linked well enough for those Commonwealth standards, then you do not have to go through that whole process. So if you did challenge a development against the Commonwealth standards, you can save everyone a lot of time and hassle by having it upfront in this bill. That is your point with linking it with the Commonwealth?

Ms Bragg: That is exactly the point.

Mr KATTER: So you are saying that the environmental integrity is still protected by the Commonwealth standards but, by the way—

Ms Bragg: No, not necessarily, because the whole point of the bilateral is for the Commonwealth to step back from being involved in the assessment and approval. But your point is exactly right. We want to see important things like public notice, legal standing for community groups, rights to comment on the referral or, when it comes in, in the legislation for the community's protection. None of us want to be going to court arguing about unclear provisions or arguing about the standards. It is better to get it in the bill where anyone can pick it up and read it. It is the right way to go, especially for really important things like public access to information, public rights to comment, legal accountability. This is important for transparency, openness and accountability. It is very important for the community at large and certainly, for community conservation groups, very important.

ACTING CHAIR: Thank you, Ms Bragg. The time allocated to this session has now closed. Thank you.

Ms Bragg: Thank you, chair.

BOWIE, Ms Leanne, Chair, Planning and Environment Law Committee, Queensland Law Society

DUNN, Mr Matt, Principal Policy Solicitor, Queensland Law Society

ACTING CHAIR: I now welcome representatives from the Queensland Law Society. Good afternoon. Welcome. Would you like to make an opening statement?

Mr Dunn: Yes, thank you very much. Firstly, thank you very much to the committee for allowing us to come today and appear before you. The submission from the society was prepared by its planning and environment committee and it focuses largely just on the chapter dealing with infrastructure charges and looked at key issues rather than a section by section analysis with the limited time that was available to us to put together some comments.

Effectively, with respect to infrastructure charges, there are two sides to the debate. Really, it is about local government and the development industry. Our planning and environment committee, along with the society's membership, is comprised of solicitors who act for both local government and the development industry. Also, to a certain extent the chapter deals with state interest issues as well and we have membership that deals with state interest and has acted in those areas previously as well.

On the substantive policy issue about who should pay for infrastructure when and in what way, the society is very much neutral in respect to those particular issues. Our purpose is really just about making a submission to try to assist with drafting issues and avoiding unintended consequences. The QLS was not one of the stakeholders consulted by the department with respect to the bill. We do not have any reason to believe that they were necessarily trying to leave us out, but were focusing on trying to bring together the development industry and the local governments to make some sort of sensible end point with respect to that. Perhaps leaving out neutral parties like us was just fair enough. Also, too, we have been engaging with the department with respect to the planning reforms quite significantly. So they may have not wanted to overload us perhaps with respect to this.

After we lodged our submission, we became aware that the Queensland Environmental Law Association had lodged a submission with the committee and we have downloaded that from the website. QELA is an organisation primarily comprised of planning and environment lawyers who represent both sides of the picture as well. They have raised a few more drafting issues and, as they are not appearing before the committee today, we thought that we might mention some of those drafting issues as well just to assist the committee.

I would now like to hand over and introduce the chair of our planning and environment committee, Leanne Bowie. Leanne personally has experience acting for the state, local governments and the development industry.

Ms Bowie: Thank you, Matt. Mr Chair, as Matt mentioned, due to the time frame constraints we focused mainly on the infrastructure charging chapter. We have not looked at the water provisions just due to the time frame. We had a quick look at the amendments to the State Development and Public Works Organisation Act to support the bilateral agreement and have just raised a few points in relation to those.

If I could start with infrastructure charging first and just picking up on a couple of, I think, the main points from our submission rather than going through them item by item, the most important point I would like to raise was item 3 of our submission about the unintended consequences of preventing a local government from issuing an infrastructure charge notice except if the local government itself had issued a development approval. That is under section 635. I have not read all the other submissions that have been lodged with this committee, but I am sure that a number of others would have also raised this as a major concern. The section begins—

This section applies if ... a local government has given a development approval.

That is, an infrastructure charges notice can only be issued if it was the local government itself that gave the development approval rather than the court, a private certifier, or perhaps even the minister upon a ministerial call-in. Of course, the most common situation where a local government has not given a development approval is where a private certifier has given a building work approval for a type of development that is not assessable in relation to a material change of use under a planning scheme.

Some local governments have recently devoted considerable effort and thought to making more types of development not assessable under their planning schemes. So they have deliberately done that to try to cut red tape on material change of use—things like duplexes in residential areas

where there are supposed to be duplexes in those areas or warehousing in an industrial area; that kind of thing. That was based on the assumption that the local governments would be able to issue an infrastructure charges notice for the additional demand placed on trunk infrastructure.

A likely unintended consequence of section 635 as it is currently drafted would be that local governments would restore to their planning schemes all the red tape of requiring those kinds of developments to be treated as assessable development by the local government just for the purpose of being able to recover their infrastructure charges, which would be inconsistent, as I understand it, with the state's broader policy objectives. I know that that issue has already been raised by a number of organisations with the department. They are aware of it. They have tried to resolve it. I just think that it would be quite easy to resolve by saying that, given the original intent was to avoid notices being issued on existing lawful use rights, you would just make it that the infrastructure charges notice can be issued if the local government, the court, or a private certifier, or indeed the minister, has issued a development permit, which creates an additional demand on the trunk infrastructure to the extent that that is over and above the existing lawful use rights for the land.

The next major point that I would like to make is point 4 of our submission about the definition of 'additional demand'. I have not checked whether there are similar provisions in the water chapter, or whatever. We just mention it in relation to section 636. Section 636(1) is very welcome and supported, because it spells out something that ought to have been obvious to everyone—but apparently from the experience of our members—it has not been, which is—

A levied charge may be only for additional demand placed upon trunk infrastructure that will be generated by the development.

It should always have been the case that that principle followed logically from broader principles about jurisdiction and about conditions being required to be reasonably required and relevant. But in practice it seems that infrastructure charges have sometimes been levied as a kind of tax, so not necessarily related to additional demand.

We would suggest that both subsection 2 of section 636 and perhaps also the explanatory notes have been perhaps too narrowly defined in relation to additional demand for talking about the imposition of charges on existing lawful uses. We would like to suggest that subsection 2 should spell out the more obvious point and, indeed, in the explanatory notes that a development does not have an additional demand—

ACTING CHAIR: Can I just interrupt there? You said that it has been open to abuse. Can you just give us an example, please?

Ms Bowie: Yes. This is actually an example that I will come to in more detail in relation to extensions to existing approvals where local governments have actually been quite frank with developers saying, 'Just treat this as a tax. We are calling this trunk infrastructure and even though we know that it is completely unrelated to your development'—say, for example, a stormwater infrastructure trunk charge which relates to trunk infrastructure in land that has nothing to do with the development; it is completely separate from the stormwater drainage system for that area—'just treat it as a tax otherwise you are going to have to end up in litigation and it is not clear enough in the legislation.'

ACTING CHAIR: Right.

Ms Bowie: So that is why it is particularly welcome that this section now does make that point. The next one would be changes to infrastructure charges upon extension of a development permit. This one is a little bit more complex and, hence, probably more boring. Everything about infrastructure charging, I am afraid, is rather boring and detailed.

ACTING CHAIR: This is section 10?

Ms Bowie: Yes, item 10 of our submission. That was about the question of increased or new infrastructure charges imposed upon extension decisions. It was actually the previous state government—I think it was during the Beattie government—that made a policy decision about this, which was that extension applications should not be an opportunity for a local government to impose new or increased infrastructure charges. Part of the background for that is that it took into account that there are other ways for landowners to extend the currency of their development permits apart from a formal application for extension. With the more sophisticated developers, there is a way of doing this through what we call roll-ons, where you do an operational works application, or a building works application. You keep doing those applications over and over again long enough to extend the currency of the material change of use. The mums and dads do not normally do that.

They are not aware of it. So they lodge a formal application for extension. In practice, the other thing that they took into account was that finance for projects generally is based on the rough ballpark estimate of costs for the project. Major new costs would be a problem for finance.

So as far as I know, that has always been a bipartisan position. The Queensland Law Society does not have a view on the principle one way or another. All we can point out is that it has not been implemented in practice due to some stuff-ups with the drafting. What happened was that there was some clumsy drafting in the original amendment to the Integrated Planning Act about extensions. What is now in section 388 of the Sustainable Planning Act—not a provision that is in the bill; it is just in the Sustainable Planning Act—says that a local government can only have regard to a certain list of criteria when deciding an extension application.

What they meant to say by that—and I have checked this with people in the department who were involved—was that there was not intended to be a power to impose additional conditions or impose additional infrastructure charges upon the extension application like having another bite of the cherry. What actually happened is it did not spell that out and the way that it was drafted means the list of criteria which a local government is entitled to consider on the extension application is entirely negative. Everything is against giving the extension. If you can only consider negative criteria and nothing positive such as hardship, the complexity of the development and the complexity of the conditions prior to commencing the use, which were the issues that were previously considered by case law, it puts local governments in a position where it is difficult for them to approve extension applications even if they want to and it also makes it very difficult to appeal if an extension is refused.

As long as section 388 does not say what it meant, local governments can and do circumvent the policy position by advising applicants that they intend to refuse the extension application based on the negative criteria unless and until the applicant has applied for permissible change, volunteering to pay new infrastructure charges or increased infrastructure charges. They bluntly say this is a tax and that tends to create hardship more for the mums and dads, as I said, than for the major developers who know their way around it. I raised that previously with the department as part of the broader planning reforms. I previously raised it with Minister Walker when he was Assistant Minister for Planning Reform and he intended to deal with it then. So I think that you would find that if you agree with me that that is an issue that should be covered by the umbrella of this legislation that the department would already have a draft available which would work.

ACTING CHAIR: Did the assistant minister at that time indicate—

Ms Bowie: He indicated to me that he intended to make that—

ACTING CHAIR: That he had a desire to address it?

Ms Bowie: Yes.

ACTING CHAIR: Okay.

Ms Bowie: Turning to the Queensland Environmental Law Association, QELA, submission, there were a couple of points that they picked up which we missed. They pointed out that some of the drafting on infrastructure charging mistakenly assumes it will always be the local government that would be issuing conditions whereas it is sometimes the Planning and Environment Court or indeed sometimes it may be the minister. They have made that point just in relation to a number of different sections. They also made a good point on page 5 of their submission that there needs to be some further framework about how a conversion application is made. So this is where the local government has identified infrastructure as being non-trunk infrastructure and the developer wants to challenge that and says that that is actually trunk infrastructure that applies to multiple developments. Everybody welcomed that provision in terms of being able to provide transparency and accountability. It is just that the framework for making the application is not there in terms of a decision criteria, whether you can charge fees for the application and all of those kinds of things. It would be fine to deal with those in a regulation if there is a regulation-making power about it.

In relation to the amendments to the State Development and Public Works Organisation Act in order to support the accreditation of a Queensland authorisation process for the purpose of the bilateral agreement with the Commonwealth under the Environment Protection and Biodiversity Conservation Act, the stated objective was to create a one-stop shop for environmental approvals—so reducing duplication. There was something I did not say in the submission but since it has been brought up by others I will go into it a little bit. Environment is obviously not a head of power in the Australian Constitution for the Commonwealth, so when we are talking about matters of national environmental significance we are really talking about matters which have been addressed under

the foreign affairs power through treaties. But environment was traditionally of course a state issue, similar to water as an example. In terms of reducing duplication, streamlining and all of those kinds of things, that is something the Queensland Law Society can comment on and support.

The majority of Queensland's resources projects are actually processed at present under the environment minister and by the Department of Environment and Heritage Protection, not by the Coordinator-General, and it is done under the Environmental Protection Act. Just in my experience and the experience of other members, on average the Environmental Protection Act process tends to be more streamlined, is structured in terms of avoiding unnecessary red tape, is generally more focused and is more certain in terms of assessment and conditions. I could not find anything in the explanatory notes or the discussion in *Hansard* about why we are just picking the CIG process rather than also looking at the EIS process under the Environmental Protection Act, which, if we were going to be bringing it under the bilateral agreement, would similarly need a few amendments to bring it in line with the standards for accreditation of environmental approvals. So we do not really have a one-stop shop because many projects would prefer to use the EIS process under the EP Act.

The focus of the bilateral approach has also been based on EISs, which is only one of the available assessment processes under the EPBC Act. There are a number of other processes available. There is a series of different processes for assessing projects which have been identified as controlled actions. There is also a process for determining that projects are not controlled actions and may be undertaken in a particular manner and variations. All of those kinds of things are not covered by these amendments or, as I understand it, by the proposed bilateral agreement. So it is probably what we might call a baby step towards a one-stop shop rather than an actual one-stop shop.

We did not have time to go through the amendments in detail with a fine-toothed comb as we would normally want to do. In terms of the framework for the laws to support a bilateral agreement, it is the EPBC Act itself which determines the relevant standards. There is also to support that the standards for accreditation of environmental approvals under the EPBC Act. All we have done really is that I had one of our members check that there appear to have been a few processes available under the EPBC Act which have not been picked up in the amendments to the State Development and Public Works Organisation Act. It would be desirable to go through that in more detail picking up issues that might have been missed. As an example, section 131AA of the EPBC Act allows a proponent 10 days to comment on a proposed decision and proposed conditions and we could not find where that kind of thing was being picked up in the amendments. Our comments on that really are just about matters of drafting.

ACTING CHAIR: I am conscious of time. We might go to the committee for questions. You raised a potential problem for the new provisions for the timing of refunds. Did you want to elaborate on that?

Ms Bowie: Yes. The one about refunds was that there is an assumption there that the timing of refunds is something that would have necessarily been agreed in advance, which is not necessarily the case. There are a lot of different situations where the agreement might not have been reached. You cannot force somebody to enter an agreement, so if the other party does not want to play ball or wants to delay the agreement will not have been entered. Another example is that it may not necessarily have been the local government that gave the approval in the first place; it might, for example, have been the minister or the court. So there just needs to be a fallback position if agreement has not been reached.

Ms MILLARD: With regard to proposed new section 676, what do you believe the unintended consequences will be of not including the transitional provision?

Ms Bowie: This is the one about infrastructure agreements prevailing over approvals. At the moment in the Sustainable Planning Act—and this is just a provision that is copied into this bill; it is just a carry forward—infrastructure agreements that are inconsistent with a development approval or infrastructure charges notice prevail to the extent of the inconsistency. The first point we made before we got to the transitional provisions was there are obvious problems with having an agreement between two parties override an approval which may have been given by the court and may have been subject to more parties being involved who may have had an interest in infrastructure, amongst other things. So to start with we would suggest that that is the wrong position; that it actually should be that the agreement is consistent with the development approval. If there is some problem with the development approval, then the development approval should be fixed. There are ways to do that—make a permissible change application for example—but the two should be made consistent so that the record is consistent.

The only thing about that is that we have been going for many years now with inconsistent agreements prevailing over inconsistent development permits. People have got used to the system and that has kind of been the way they go about making amendments by a back door, so there are all of these agreements sitting out there that are inconsistent with the development approvals. The transitional provision, if you were going to make the amendment to section 676, would have to be that you stay with the existing unamended act unless the applicant or the owner applies to bring the situation under the amended act that they are going to be treated as consistent going forward.

Mr MULHERIN: In your submission you raise some concerns about the unnecessarily broad discretion of the Coordinator-General to take into account any other matter that the Coordinator-General considers relevant under section 54W. You say it is a broader discretion than the corresponding decision rules under the EPBC Act and seems likely to create uncertainty.

Ms Bowie: Yes.

Mr MULHERIN: What sort of uncertainty do you envisage?

Ms Bowie: In relation to considering matters of national environmental significance, the Coordinator-General should be considering the same matters as the Commonwealth environment minister would have been considering. It should not just be extraneous matters. The problem is of course that the Coordinator-General does have broader powers. The Coordinator-General is considering the entire project, not just the matters of national environmental significance. I imagine that was why such a broad discretion was included, but to me it is just an inconsistency. In relation to matters of national environmental significance, it should be the same matters.

Mr MULHERIN: So it could lead to—

Ms Bowie: My concern is it could lead to legal challenge, yes.

Mr MULHERIN: Which creates further uncertainty for a proponent.

Ms Bowie: Which creates further uncertainty.

Mr HART: You said that you were quite happy to see the clause about additional demand on trunk infrastructure being the only reason for a levy to be placed—

Ms Bowie: In relation to the trunk infrastructure, yes.

Mr HART: Yes. Do you think that the definition of additional demand is too grey? Is it black and white enough? How far should we take this? Do you think it is reasonable to charge someone a levy if, say, for instance, they put a development in and there will be an extra 500 cars using a road that is 10 kilometres down the track?

Ms Bowie: My main point about section 636(2) was not that it was too broad or too grey, but actually that it was too narrow, because 636(2) is only dealing with one particular issue that was of concern which was existing lawful uses. What it is talking about is the situation where you have got a lot, you are already entitled to put one house on that lot, but you want to subdivide that lot to create, say, 20 houses. It is the 19 that they intend to treat as the additional demand rather than the one that you are already entitled to. Perhaps you want to knock down the house in one place and move it to another place, that kind of thing. It is just dealing with that specific circumstance. I acknowledge that the subsection begins 'included.' In other words, that is not the only reason why it might be additional demand. All I am really suggesting there is that we add an additional specific circumstance—that is, that it is only additional demand if there is a relationship, a nexus, between the development and the trunk infrastructure. Nexus is something that has received quite a lot of attention from case law over many, many years. The questions about where you draw the line are all really sitting there in the cases. As I understand it, it is something that the department can assist with by way of statutory guidelines and with methodologies as well.

ACTING CHAIR: The time allocated for this session has now expired. Thank you for your attendance.

ALLEN, Mr Michael, Executive Director, Office of the Coordinator General, Department of State Development, Infrastructure and Planning.

COUTTS, Mr James, Executive Director, Planning, Department of State Development, Infrastructure and Planning.

LEAVER, Ms Gayle, General Manager, Water Supply Policy and Economics, Department of Energy and Water Supply.

MISSO, Mr Dean, Director, Department of State Development, Infrastructure and Planning.

NOONAN, Ms Sally, Executive Director, Futures Unit, Department of State Development, Infrastructure and Planning.

WILDE, Ms Natalie, General Manager, Government Land Asset Management, Department of State Development, Infrastructure and Planning

ACTING CHAIR: Welcome. Would anyone like to make an opening statement?

Mr Coutts: I might commence. Thank you very much for the opportunity to do so. We are very grateful for all the submissions that have been received and note some of the complimentary things that have been said about the process that we conducted in relation to the infrastructure charges component which I am here to talk about. It would be fair to say that the majority of information contained in the submissions is information we have heard before. That is not to dismiss them. It is understood and expected that people who have made these points strongly in that very lengthy process see this as yet again an opportunity to make many of the same points. They are well within their rights to do that. In a number of instances those are points of detail, now seeing the bill, which are quite instructive to us. One that I might highlight, and it was mentioned by the previous presenter, is in relation to when a charge may be levied. It has come to the department's attention, well before this process, I might add, in some of the previous presentations, that as currently drafted section 635(1) (a) says that the section applies if a local government has given a development approval. In our enthusiasm to broaden out the matters that could be covered when a certifier issued an approval, which we have done in section 638(1) (b) which extended that beyond the certificate of classification to a final inspection certificate, we have overlooked including them in the list of parties that can issue such a notice. So we are aware of that issue and intend to correct that in response to quite a few submissions that have been made on the subject.

As I said, there are a number of matters raised in the submissions of similar detail that we will look at again. I note that much of the conversation that occurred in the earlier presentations were actually matters outside the content of this bill around the level of the charges and the notion of priority development infrastructure funding and the fair value charges that attach to that. Our attention here is focused mainly on this bill but we are quite happy to respond to any questions you might have on that subject. We realise that the two are part of a broad program of reform around infrastructure.

Probably one introductory comment I would make, or a matter that bears remembering in all of that conversation, is that when the state chooses to establish an infrastructure charge it does so at the upper level. We are not saying that is what councils have to charge. In fact, I think the question was put to the Local Government Association of Queensland representatives how many councils would be affected if they were to consider adopting the fair value charges. It is a very good question and it should be an easy question to answer. It is actually not, because councils regularly make resolutions about their levels of charges. We have looked at that and as far as we can tell—it will be interesting to see the answer you get back from LGAQ on that question—we think it is 20 councils. So, 57 of Queensland's councils do not currently charge even at the level of the fair value charge. In fact, a considerable number are charging well below that. In fact, some are charging nothing at all.

ACTING CHAIR: Just a point of clarification, when you say the fair level charge, you are talking about the ceiling?

Mr Coutts: Yes. In other words, they are charging—

ACTING CHAIR: The ceiling?

Mr Coutts: There are 20 that are charging at or close to the levels of the current caps of the state planning regulatory provision and 57 are well below. I only mention that because I do believe there is an impression that when the state sets what the maximum charge will be that that is what everybody is running off and doing. But in reality councils choose very carefully whether they do that or not and, interestingly, again on the information we have been able to glean, approximately only half of the 20 are in South-East Queensland and the other half are elsewhere. Most of the ones that are at that upper level of the caps are what you would call high-growth councils. So even if they are outside SEQ they are growing reasonably healthily. I guess the other aspect of that that again confuses the situation in making any sensible comparisons is that quite a few of those are right now discounting charges. They have passed a resolution to encourage development by discounting charges. We are very conscious of the efforts that local government already makes to check and balance its charges against the circumstances that apply. I only say that because I think in having a discussion on any of those matters it is a useful background to that discussion just to realise that often this debate occurs at the extremes and the impact that such an arrangement would have when in reality its effect is relatively minimised.

ACTING CHAIR: One thing I wanted to say is that you can understand their desire to stimulate growth, but we have heard from the other side saying that 68 per cent of the cost is being picked up by the ratepayers. I just wanted to point that out.

Mr Coutts: I think the figure that is most commonly quoted, and I think it was quoted earlier today, is that local government infrastructure charges, even when at the full cap, recover around 70 per cent—I think 69 point something was the figure mentioned earlier today. That probably is an accurate reflection when you look at the council's priority infrastructure plans and the cost they plug into those and then how much the charge reflects recovering that. So, okay, they are down 30 per cent right off the bat. That superficially seems to be the case, but when you burrow into the priority infrastructure plans what you will find is that those priority infrastructure plans are often, and quite responsibly so, based on best available information, but then significant contingencies on top of those, so 20 and 40 per cent contingencies, so the actual cost of delivering the infrastructure will quite often be less. Councils are doing the responsible thing by saying this is what we think our total infrastructure costs will be over the next, say, 20 years and working that out, but the gap often when the development occurs on the ground is significantly less than that 30 per cent and sometimes no gap at all depending on how close their original estimate was to the cost of delivering that infrastructure.

I also reflect back that a quarter of a century ago when I was in local government and looking at what councils were recovering it was next to nothing. Back in the day, as you would say, the ratepayer was footing the bill for almost all of what we would today call trunk infrastructure. We are not saying that it is sensible to return to that era. We have moved on from that. But what we are seeing is a sensible understanding of how best the total delivery of infrastructure should be managed and that is what we are trying to achieve through the bill provisions so that all the basis of that can be sensibly managed. I might just stop my introductory comments and perhaps pass on to Michael, if that is okay.

ACTING CHAIR: By all means.

Mr Allen: Thank you for the opportunity to respond to submissions and public comments about the bill. I note six submissions received by the committee relate to the proposed amendments to the State Development and Public Works Organisation Act. The majority of those submissions are supportive of the bill, although several suggested improvements that have been put forward and some of those submissions will be considered in the finalisation of the bill. Other submissions do not appear to support the purpose of the proposed new provisions and if it is helpful I would like to provide some context around the purpose of the bill and the part it plays in the overall state-Commonwealth initiative.

ACTING CHAIR: By all means.

Mr Allen: The process was restarted, I guess, in October 2013 with the signing of the memorandum of understanding to create a one-stop shop for environmental approvals. A key outcome of that MOU was to negotiate the bilateral agreement. The aim is to conclude the bilateral agreement by September 2014. The initial priority is to develop an in-principle agreement for major project approvals. A key milestone was reached last week. On 14 May the draft approval bilateral agreement was released by the federal environment minister and the Queensland Minister for Environment and Heritage Protection for public comment.

The draft agreement has been developed for major project approvals around the EIS processes in the State Development and Public Works Organisation Act and the Environment Protection Act. It is important to consider the proposed amendments alongside the draft approval bilateral agreement because together they form a package. For the Commonwealth environment minister to accredit an authorisation process to be included in an agreement, the minister must be satisfied that when considered together the bilateral agreement and the accreditation process accord with all the necessary environmental standards. Those standards are set out in the standards for accreditation document, including requirements for assessment processes, decision making criteria, requirements for transparency, public participation and rights of review.

Under the EPBC Act draft approval bilateral agreements must be released for a minimum 28-day public consultation period. Consistent with the finalised standards document, the Commonwealth advised that the Queensland authorisation process to be accredited under an agreement must be in bill form prior to the commencement of the public consultation process for the draft approval bilateral agreement. Additionally, the authorisation process to be accredited under the agreement must be tabled in both Commonwealth houses of parliament for a minimum of 15 parliamentary sitting days. It is a requirement of the EPBC Act that the relevant part of the Queensland law in which the authorisation process is set out also be tabled alongside the agreement.

To meet the time frame agreed by Australian and Queensland governments as set out in the MOU, the draft agreement must have commenced public consultation by mid May 2014 and be tabled in both Commonwealth houses of parliament in early July 2014. That concludes our initial response. We are happy to answer questions.

ACTING CHAIR: Thank you. I saw that there—so both houses by early July. It is a short time frame.

Mr HART: We have heard from a number of presenters, particularly the last couple of presenters, the EDO and the QLS, that they are concerned about some of the federal investigations that might have been carried out with the way the present process works now but might not be carried out under the changes that are being made here. Does what you have just outlined then cover those particular instances?

Mr Allen: Yes. The key point is that the authorisation process in the draft bill must be considered together with the approvals bilateral agreement. So a lot of the standards that are set out in the standards framework are captured in the bilateral agreement and the bill is essentially a vehicle to deliver that. So the two must be looked at in tandem.

Mr HART: I imagine you have not had time to have a look at the EDO's submission yet. But it would be interesting to see whether the points that they make are ticked off by both agreements.

Mr Allen: Yes. We have responded to most of that in our submission as of yesterday, so that should be available to you. We are happy to take further questions.

Mr MULHERIN: The Queensland Law Society had concerns about the unnecessarily broad discretion of the Coordinator-General to take into account any other matters the Coordinator-General considers relevant in section 54W. They are saying it is a broader discretion than the corresponding decision rules under the EPBC Act and seem likely to create uncertainty. Would you agree with their comments there or are they overreacting? They see that it will probably lead to a legal challenge and create further delays.

Mr Allen: Yes, it is a legal point and it is worth us going back and having a look. But the Commonwealth minister has a reasonably broad discretion anyway.

Mr MULHERIN: They are saying that the Coordinator-General's discretionary powers are broader than the Commonwealth minister.

Mr Allen: Yes. That is their point but, under part 9 of the EPBC Act, the Commonwealth minister may consider social and economic matters. I think that is where they are heading, that the Coordinator-General could consider more than that. Again, it is a point we probably need to go and have a look at.

Ms MILLARD: The Queensland Law Society raised a concern with regard to section 388. Do you know if there are any changes with respect to carrying that forward? I know that you are not specifically looking at it, but they did raise that concern. They said they had spoken to Minister Walker when he was the then assistant minister for planning and that he was going to look into that.

Ms Wilde: In relation to section 388, as the QLS identified, it is not currently in the bill, though it is an issue that they have raised. It is certainly something that we are willing to have a further look at. One of their questions was that if under section 388 it was intended that a new infrastructure charge could be issued because someone has requested more time then we need to make that clear. I would like to clarify that that is not the intention. That is not the purpose. We do not want infrastructure charges notices being levied just because somebody requests further time in relation to the development application. The department is certainly happy to have a look at section 388 and the specific issues that the QLS have raised.

Ms MILLARD: So that point is more for clarification then on your behalf you believe?

Ms Wilde: Yes, that is correct.

Mr Coutts: Perhaps supplementary to that, as you are aware, we are in the process of preparing new planning legislation. It may well be that that point interacts with things broader than this component of amendments. So we would be looking at it in the context of the broader amendment package to that, and that bill will be forthcoming later this year.

Mr MULHERIN: This question is probably to you, Mr Coutts. The bill has been touted by the government as giving local government, the distributor-retailers and the development industry the tools needed to deliver new developments in a predictable manner. However, proposed section 478A of the Sustainable Planning Act allows for applicants to appeal to the Planning and Environment Court against the refusal of local government to convert non-trunk infrastructure to trunk infrastructure. How does the department envisage that the appeal process will be shaped to ensure that all stakeholders are not burdened with an additional cumbersome process that acts as a regulatory bottleneck for developments?

Mr Coutts: Yes, I appreciate the point that is made by some local governments—and they are largely the parties that have made the point—that an appeal right for a matter does open them up to the need to respond to a challenge to their decision. I guess the natural consequence of any right that is given is a right to respond to that if the outcome is not as you anticipate it should be. So we see that as a fundamental component of the legislation.

It is really a reaction and response to an opportunity that is now given to an applicant to challenge whether local government got it right in the first place. There are a couple of circumstances under which that could occur—probably more. But a couple I can think of are that in a perfect world planning schemes and local government infrastructure plans would always be in alignment. You would never see an infrastructure plan and a planning scheme provision that did not line up. It is not a perfect world, and we see many instances where planning schemes provide for a development, yet the infrastructure plan has not caught up with that. So, even though there is an intention for development to occur, there is no indication of how trunk infrastructure would be provided in that area. So a developer choosing to take advantage of the scheme provisions is left with a decision around 'Am I going to provide this infrastructure?' and it is trunk infrastructure. At present there is no mechanism for them to question or challenge that in any formal way.

Perhaps a less common reason for doing this, but it has happened—and, yes, we have heard about hyperbole and unsubstantiated claims, but we do hear of anecdotal evidence that, particularly when the capped charge was introduced, a number of councils quite deliberately stripped trunk infrastructure out of their infrastructure plans so that developers could be conditioned to deliver that infrastructure but had no capacity to get an offset or a refund for that. That was an endeavour to minimise the cost outgoings of councils.

So the endeavour here, in response to a lot of commentary and questions and inquiries and a lot of debate and discussion about this through our workshop process, is that it was fair and reasonable for a developer or an applicant to question whether the infrastructure they are being conditioned to provide was in fact trunk, and for council to have a certain time to respond to that and to provide decent reasons—and let's face it on many occasions those reasons will be quite sensible and the developer says, 'Right. No.' But in many instances the local government says, 'Yes, fair enough. There is the outcome.' Where the reasons are not adequate or appropriate, then the opportunity is there for the developer to say, 'Okay, I am not satisfied with that,' and choose to appeal that in the court. Will that under those instances result in more—it is not red tape; it is just more administrative process? Invariably yes, but it is a fair outcome of that option to go down that path.

Mr MULHERIN: So do you think the threat of a court process might bring the parties to the table and negotiate an outcome?

Mr Coutts: I guess only time will tell that. My intuition is that knowing that decisions around these sorts of matters are open to challenge will cause virtually every local government to first of all check 'Is my infrastructure plan actually lining up with my planning scheme?' That would be the first thing I would do in their case. 'Have I inadvertently created a situation where I am exposed to a claim of this kind?' I think, secondly, what it might well do is to have them question the veracity of the information on which they base their infrastructure plans.

We do hear all the time about the difficult financial situation that local governments could be placed in by this. My simple take on it is that no planner identifying an area as suitable for urban development should be doing that without understanding the implications of the infrastructure needed to deliver it. Every local government has a responsibility to do that. Otherwise we just colour areas pink on a plan and say, 'Go for your life,' and we do not care what it costs us. Every council knows that it comes with an obligation. Clearly local governments are responsible for ensuring that the infrastructure is there to serve the communities that they say they want to see built on the ground. You could do it almost on a square kilometre basis—in there there will be X amount of roads, X amount of pipes and Y amount of stormwater systems et cetera—and you could do a very high level estimate that would get you in the ballpark of what the council's obligations are upfront. If their budgets are not accounting for those obligations, then they probably deserve to be taken to task for not properly thinking through that situation. But this is, we think, a mechanism that over time will probably see better infrastructure planning and a greater degree of certainty. So our hope is that this provision will in the future never be invoked because infrastructure plans are accurate and a developer has no grounds.

Mr MULHERIN: So was there any consideration given to other dispute resolution processes other than the Planning and Environment Court?

Mr Coutts: Yes. In fact, the provisions in here are bound—let's see. The building and development committee can be used. But I think, even before you get into those sorts of resolutions, this will not usually come as a surprise either to an applicant or to the council. Most applicants, especially when their application involved something that triggers the need for trunk infrastructure, usually commence their process of consideration with a prelodgement discussion with a council. They will be identifying their intention to proceed. The council will hopefully be saying, 'This is what you would need to provide.' Very early in the process, I believe, in most instances there will be a clear understanding about where there is a difference of opinion. Most sensibly through the course of preparing the application, lodging it and having it considered, most of those differences would be ironed out and the development would be appropriately conditioned. This is a kind of last resort, and even then it is not a matter of going straight to the Planning and Environment Court. Their first recourse is to the building committee, which is much lower stakes.

ACTING CHAIR: That is the new appeal. I might say just as a comment that you talk about planning but you are always going to get that developer that sits outside the urban footprint that is going to come along, buy some cheap land, want to develop it, cut it into five-acre blocks and want power and water.

Mr Coutts: Yes. The system deals with those by determining that that is not in sequence and so there could be no reasonable expectation that the council is then liable for the provision of infrastructure that was never envisaged to serve what their plan shows can happen. So the out-of-sequence developments, I believe, are satisfactorily dealt with in other ways. We are really talking here about somebody doing a development where the plan says you can do it, yet the trunk infrastructure designation is not there to match it.

Mr MULHERIN: Proposed section 633 of the Sustainable Planning Act mandates that local government and distributor-retailers must include a method for working out any offsets or refunds that may be applicable in charges resolution. Such methods must comply with either the State Planning Regulatory Provision (adopted charges) or another regulation which prescribes guidelines for such methods. Currently there is no public guidance as to how the government will set the guidelines for such a calculation. Can the department advise of its intentions as to what form the guidelines for calculating offsets and refunds will take and what factors inform the department and its thinking?

Mr Coutts: You make a very good point there. We appreciate that in any piece of legislation there is supporting material that we have to prepare to give effect to a lot of these matters. In fact, just last week we released a consultation on a draft guideline for the working group members. We are happy to table that. This is around the standard process for determining the value of infrastructure or land in certain circumstances. So what I am trying to do by this is establish our

bona fides in intending to move forward with the same sort of collaborative and consultative process as we have established to this point. Your point is well made, that it does require that appropriate guidance, but I just reassure you that we are doing that.

ACTING CHAIR: I seek guidance to table that document. There being no objection, it is so ordered.

Mr HART: On that subject, is there any reference to time frames for refunds? It was raised by a few—

Mr Coutts: The bill in its current form requires a time frame where a refund is to be provided. It does not set that time frame but it requires a local government to provide notice of when that time frame would be, so when the refund would be payable by the council. Like any other condition, if the applicant is not satisfied that they do not get their repayment until 2022 and they would prefer it in 2018, two years into the development rather than six years into the development, then that could be dealt with through the negotiated decision notice process around the condition. So we are not prescribing what the timing is. In 649(4) it says the timing of the refund is subject to terms agreed between the payer and the local government.

ACTING CHAIR: Are there any further questions?

Ms MILLARD: The Environmental Defenders Office is concerned that the one-stop shop, which was I think brought forward from the Sustainable Planning Act that we worked on 18 months ago, is really a conflict of interest. I am not sure who to direct the question to.

ACTING CHAIR: Mr Allen.

Ms MILLARD: Do you feel that that is the case? Whatever your answer, maybe you could give an example?

Mr Allen: Clearly I do not think it is the case mainly because I work for the Coordinator-General—

Ms MILLARD: Maybe another example would be good.

Mr Allen: It is difficult to understand the basis of why there would be a conflict of interest. The bilateral approvals and the proposed amendments are set up really around maintaining the environmental standards in the EPBC Act. There is a document here that the Australian government has released around the assurance framework. This was attached to our submission last night. There is a strong framework there. Essentially, the Coordinator-General must act in accordance with that. There is no other way to really put it in that—

Ms MILLARD: So you already have quite strong guidelines that you have to work within?

Mr Allen: Basically, at the moment, the Coordinator-General has wide discretion to look at all environmental matters and that will remain at the state level. At the national level, we are acting on behalf of the EPBC Act. There are quite strong requirements set out in the bilateral approvals that must be met.

ACTING CHAIR: I am conscious of time.

Mr HART: The UDIA raised an issue about stamp duty on parks. I realise that has not made it into this bill but it seemed like a pretty important issue. Does the government have that under control in some way?

Mr Coutts: Yes, we do. The key point is not that the stamp duty is unfair—you pay stamp duty on the actual value of the land—but that there has not been consistency in the way in which that land has been valued for the purpose of infrastructure charges. So if that park that was the example was trunk infrastructure and therefore an offset or a refund was due because it exceeded the amount that the developer had to pay otherwise, there has been no methodology or no consistency to work that out. The Queensland government says to local governments, 'We are empowering you to do the right thing.' On some of these issues it is very hard for them to get their head together to do at least the consistent thing—let us set aside whether it is right or not—and some local governments say, 'That park is worth nothing to us. You give it to us for nothing.' Others say, 'We'll go on some nominal value per hectare.' Others say, 'Fair enough, you've paid this much for it. We'll compensate you for the actual cost.' There is no consistency.

It is not a matter that really rests in the bill, but we appreciate that it is a matter that has been raised through the consultation process we have had. We acknowledge that there is an issue there, a lack of consistency, and we are going to be preparing a guide for how there should be an appropriate methodology for valuing land so that you do not end up with that bizarre circumstance where the land for the purposes of handing it over is worth nothing but you are paying stamp duty as if it is full market value. That is that those two sit in much closer proximity.

Mr MULHERIN: Has the department estimated what share of infrastructure constructed annually by local governments and distributor-retailers would receive funding under the Priority Development Infrastructure Co-investment Program?

Mr Coutts: Not at this point in time. If I can perhaps expand on that answer a little bit—

Mr MULHERIN: Yes.

Mr Coutts: The intent of the priority development infrastructure is to create the capacity for significant pieces of infrastructure that result in economic development outcomes to be funded. The point was made by the LGAQ and some of the individual local governments that they are going to sit back and wait and see how much is in that fund to decide whether it is going to be worthwhile them putting their hat in the ring. I think we understand that and appreciate it entirely. The figure has not been arrived at yet. If one looks at the implications of all of the 20 councils adopting the fair value charges—again, it is a bit difficult to estimate—the ballpark figure is probably about $50 million annually. So the fund would have to be at least that size if not bigger to attract their interest.

Mr MULHERIN: So it will be a loan repayment scheme, not a grant scheme?

Mr Coutts: That will depend on the circumstances too. At this point in time, without the actual guidelines available, it is difficult for me to say with certainty, but the approach taken so far is that it will depend on the circumstances—the degree of recovery and the means of recovery. Sometimes it will be seen as sufficiently important for there to be minimal recovery on the amount injected.

Mr MULHERIN: Would the interest rate be the current QTC rate?

Mr Coutts: I would have thought that that would be the sensible thing to do but at this stage it has not been determined.

ACTING CHAIR: We will wind up. The time for this session has expired. I would like to thank you for your attendance here today. I believe the committee has gathered valuable information that will assist in its inquiry into the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014. I declare the hearing closed.

Committee adjourned at 1.22 pm