Parliamentary Committees

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

Report No. 41

State Development, Infrastructure and Industry Committee

May 2014

State Development, Infrastructure and Industry Committee

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Acknowledgements

The committee thanks those who briefed the committee, provided submissions and participated in its inquiry. In particular, the committee acknowledges the assistance provided by the Department of State Development, Infrastructure and Planning and Department of Energy and Water Supply and the Queensland Parliamentary Library and Research Service.

[1] On 6 May 2014, the committee was advised of the inability of the member for Gympie to attend meetings of the committee. The member for Keppel was appointed Acting Chair and the member for Hervey Bay was appointed as a committee member for the duration of Mr Gibson's absence.

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Chair's foreword

This report presents a summary of the State Development, Infrastructure and Industry Committee's examination of the Sustainable Planning (Infrastructure Charges) and Other Legislation Bill 2014.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles to the legislation, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank those organisations and individuals who lodged written submissions on the Bill and others who informed the committee's deliberations.

I would also like to thank the officials from the Department of State Development, Infrastructure and Planning and Department of Energy and Water Supply who briefed the committee, the committee's secretariat, and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.

Bruce Young MP
Acting Chair

May 2014

Abbreviations

the Agreement	Draft Approval Bilateral Agreement between the Commonwealth and Queensland Governments
the Bill	Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014
CG	Coordinator-General
committee	State Development, Infrastructure and Industry Committee
Department	Department of State Development, Infrastructure and Planning
EDO Qld	Environmental Defenders' Office (Qld)
EIS	Environmental Impact Statement
EPBC Act	*Environmental Protection and Biodiversity Conservation Act 1999* (Cth)
ESD	ecological sustainable development
FLP	fundamental legislation principles
Government	Queensland Government
IA	Infrastructure agreements
IDAS	Integrated Development Assessment System
IPA	*Integrated Planning Act 1997*
LFRA	Large Format Retail Association
LGAQ	Local Government Association of Queensland
LGIP/s	Local Government Infrastructure Plans
LSA	*Legislative Standards Act 1992*
MNES	matters of national environmental significance
MOU	Memorandum of Understanding
PIP/s	Priority Infrastructure Plans
QELA	Queensland Environmental Law Association
QLS	Queensland Law Society
QMDC	Queensland Murray-Darling Committee
QRC	Queensland Resources Council
SEQ Water Act	*South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*
SLC	Scrutiny of Legislation Committee

SPA	*Sustainable Planning Act 2009*
SPA Bill	Sustainable Planning Bill 2009
SPDWO Act	*State Development, Public Works and Organisation Act 1971*
SPDWOA	*State Development, Public Works and Organisation Act 1971*
SPRP	State Planning Regulatory Provision
Standards document	Standards for Accreditation of Environmental Approvals under the EPBC Act
Taskforce	Infrastructure Charges Taskforce

Recommendations

Points for clarification

Point for clarification 1 **12**

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

(a) Cairns Regional Council, that are in the process of preparing new planning schemes that do not currently contain priority infrastructure plans, and
(b) Brisbane City Council, whose priority infrastructure plan will commence on 1 July 2014.

Point for clarification 2 **15**

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

Point for clarification 3 **17**

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

Point for clarification 4 **17**

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

Point for clarification 5 **17**

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

Point for clarification 6 **19**

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

Point for clarification 7 **29**

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

Point for clarification 8 **30**

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

1 Introduction

1.1 Role of the committee

The State Development, Infrastructure and Industry Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012 and consists of government and non-government members.

The committee's primary areas of portfolio responsibility are:[2]

- State Development, Infrastructure and Planning
- Energy and Water Supply, and
- Tourism, Major Events, Small Business and the Commonwealth Games.

1.2 The referral

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

On 8 May 2014, the Sustainable Planning (Infrastructure Charges) and Other Legislation Bill 2014 (the Bill) was introduced and referred to the committee for examination and report. In accordance with Standing Order 136(1), the Legislative Assembly fixed the committee's reporting date as 29 May 2014.

1.3 The committee's inquiry process

On 9 May 2014, the committee called for written submissions by placing notification of the inquiry on its website and notifying its email subscribers. The committee also sent letters to a range of relevant stakeholders notifying them of the committee's inquiry and seeking submissions. The closing date for submissions was 16 May 2014. The committee received 38 submissions (see Appendix A).

On 15 May 2014, the committee held a public briefing with the Department of State Development, Infrastructure and Planning (the department) and the Department of Energy and Water Supply. On 21 May 2014, the committee held a public hearing in Brisbane (see Appendix B). The submissions, transcripts of the public departmental briefing and public hearing, and the correspondence received from the department throughout the inquiry are available from the committee's webpage at www.parliament.qld.gov.au/sdiic.[3]

The committee has found that its consideration of the Bill has been disadvantaged by the timeframe imposed by the House. In formulating inquiry timetables, the committee endeavours to maximise the time it has to seek submissions from key stakeholders and members of the public. In this particular inquiry, submissions were open for one week and the committee was unable to accept requests for late submissions which makes preparing and approving submissions difficult for organisations.

The committee wishes to raise the issue of setting reporting timeframes for future Bills for the consideration of the House. Restricted timeframes impose considerable constraints on the ability of the committee to gather evidence, deliberate in detail, and formulate recommendations for amendment. Its administrative process, including time to draft considered reports, are also

[2] Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 11 February 2014).

[3] At the time of writing this report, the transcript of the public hearing transcript was a proof transcript.

significantly affected by short timeframes. Whilst the committee recognises that quality legislation takes time to develop and is sometimes required to be implemented by a certain date, as evidenced by this Bill, the committee wishes to convey to the House that it also takes time to scrutinise effectively.

The committee has done its utmost to consider the issues raised in the inquiry and thanks the department for its response to submissions within a short timeframe. It is evident that the department's response did not address all issues raised by submitters. In order to strengthen the consideration of the submissions in addition to the committee's analysis, the committee respectfully requests the Deputy Premier and Minister for State Development, Infrastructure and Planning (Deputy Premier) and the department consider the issues raised in the submissions, in detail, prior to the second reading debate on the Bill.

1.4 Policy objectives of the Bill

The policy objectives of the Bill fall into two main areas:[4]

1. reforming the local infrastructure planning and charging framework, and
2. implementing an authorisation process for the proposed bilateral agreement between the State and Commonwealth Governments for environmental assessment and approvals under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act).

These objectives are examined in Part 2 of this report.

1.5 The Government's consultation on the Bill

In relation to the proposed infrastructure charges reforms, the department issued a discussion paper – *Infrastructure planning and charging framework review* and sought public submissions from 1 July to 9 August 2013. The department received 85 submissions from various peak bodies, local authorities, and individuals. The explanatory notes indicate that the feedback provided on the discussion paper informed the government's policy position that is reflected in the Bill.

The department also held numerous workshops with key stakeholders to discuss various policy options between February 2013 and April 2014. The department advised that a consultation version of the Bill was provided at the most recent stakeholder workshop.

Following the release of the draft Bill at a recent workshop, the department received 13 submissions. The feedback from the development industry indicated general support for the reforms but did express some concerns about aspects of the Bill. Some local authorities also expressed concerns in relation to the Bill. The department advised that as the submissions had only just been received they were yet to be fully considered and the content of the submissions would be used to inform any consideration of amendments to the Bill.[5]

In relation to the proposed amendments for the bilateral agreement for environmental approvals under the EPBC Act, the explanatory notes indicate that the Coordinator-General consulted with a range of key stakeholders between 28 February and 31 March 2014. The consultation occurred on a range of proposed amendments to the *State Development and Public Works Organisation Act 1971* (SDPWO Act).[6]

The department advised concerns were raised by the Environmental Defenders' Office (Qld) (EDO Qld) about a lack of consultation on the proposed amendments. The department advised that a number of environmental groups were contacted from their database of usual contacts for the

[4] Explanatory Notes, pp 1-2.
[5] Public briefing transcript, pp 2-3.
[6] Explanatory Notes, p 11.

Environmental Impact Statement (EIS) process and that EDO Qld was not contacted by unintended omission.[7]

The committee notes that in his introductory speech, the Deputy Premier tabled an exposure draft of a regulation to be made under the SDPWO Act to support the implementation of the proposed bilateral agreement.[8]

The Coordinator-General's consultation on the Bill also included the proposed amendments to the regulation. The explanatory notes indicate that industry and local governments supported the amendments in relation to an approvals bilateral and no comments were received from key environmental groups. The committee also notes the Coordinator-General undertook a review of fees and charges for services delivered under the SDPWO Act, and that additional fees for each project subject to the proposed bilateral agreement would be imposed.[9]

Committee comment

The committee considers there to have been a significant amount of consultation on the infrastructure reforms, and commends the Department of State Development, Infrastructure and Planning on its approach to developing the policy proposals contained within the Bill.

The committee also appreciates an exposure draft of the regulation to be made under the SDPWO Act being tabled at the time of the Bill's introduction. This enabled submitters to make comments and to thoroughly consider the amendments to the Act being proposed by the Bill.

The committee encourages the Office of the Coordinator-General to review its practices in relation to consultation on legislative proposals and for the Office to, in future, select broader stakeholders on the basis of the policy proposal as opposed to using a limited list of stakeholders under its EIS processes.

1.6 Should the Bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether to recommend the Bill be passed. After examining the Bill, and considering issues raised in submissions and at the public hearing, the committee has determined the Bill should be passed.

Recommendation 1

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

[7] Public briefing transcript, p 4.
[8] Queensland Parliament, Record of Proceedings, 8 May 2014, pp 1431-1432.
[9] Explanatory Notes, pp 9 & 11.

Recommendation 2

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

(a) consider all of the issues raised by submitters to the committee's inquiry, in detail, prior to the second reading debate on the Bill, and

(b) continue to consult with stakeholders in relation to the development of the supporting statutory material following the passing of the Bill.

2 Examination of the Bill

2.1 Overview of infrastructure planning and charges reforms

The amendments relating to infrastructure charges proposed to be made to the *Sustainable Planning Act 2009* (SPA) by the Bill are part of a series of reforms.

A new system for levying development infrastructure charges based on Priority Infrastructure Plans (PIPs) and Infrastructure Charges Schedules was introduced into the planning framework by the *Integrated Planning and Other Legislation Amendment Act 2003* in October 2004.[10] However, until local governments prepared a PIP, they were able to continue levying infrastructure charges under their planning scheme policies relating to infrastructure (i.e. sewerage, water supply, roads, open space and drainage networks).[11]

In August 2007, following a review of the *Integrated Planning Act 1997* (IPA),[12] the Government released *Planning for a Prosperous Queensland – A reform agenda for planning and development in the Smart State* which described how the Queensland Government (Government) intended to respond to the findings of the review of IPA. Amongst other things, the Government proposed to simplify the process for preparing PIPs and infrastructure charges, and enable the Building and Development Tribunal to hear certain matters relating to infrastructure charges.[13]

In December 2009, the Sustainable Planning Bill 2009 (SPA Bill) was introduced and the SPA replaced the IPA. The explanatory notes to SPA Bill stated that the legislation proposed to make the infrastructure charging regime 'even more transparent and equitable'.[14]

The Government established the Infrastructure Charges Taskforce (Taskforce) 'to further reform development infrastructure charging arrangements' following the Queensland Growth Management Summit in March 2010.[15] The Taskforce presented its final report (Recommended reform of local government development infrastructure charging arrangements) a year later. The report contained ten recommendations, all of which were supported by the Government.[16]

The *Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011* (Qld) implemented a number of the recommendations made by the Taskforce. Amongst other things, the legislation introduced 'a maximum infrastructure charge to apply throughout Queensland as an interim arrangement for three years, pending development of long term reforms to the

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10 Queensland Government, *Queensland Government response to the report by the infrastructure charges taskforce : Improving Queensland's local government infrastructure charges system*, April 2011, p 4.

11 David Nicholls, 'Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011: Background and historical perspective', HopgoodGanim Lawyers, 12 July 2011, p 4. Transitional arrangements under the *Sustainable Planning Act 2009* continued the arrangement that had been in place under the *Integrated Planning Act 1997*. Many local governments still do not have a PIP in place: see Queensland Government, 'Local Government Priority Infrastructure Plans – Progress Schedule'.

12 The IPA/IDAS reform project was initiated in February 2006. It involved the release of a discussion paper (*Dynamic Planning for a Growing State Feedback Booklet: Options for improving Queensland's* Integrated Planning Act 1997 *and Integrated Development Assessment System*) and 'extensive stakeholder consultation': Sustainable Planning Bill 2009, Explanatory Notes, p 1.

13 Queensland Government, Department of Local Government, Planning, Sport and Recreation, '*Planning for a Prosperous Queensland – A reform agenda for planning and development in the Smart State'*, August 2007, p 7.

14 Sustainable Planning Bill 2009, Explanatory Notes, p 3.

15 Queensland Government, *Shaping Tomorrow's Queensland: A response to the Queensland Growth Management Summit*, p 4 of 8.

16 Queensland Government, *Queensland Government response to the report by the infrastructure charges taskforce : Improving Queensland's local government infrastructure charges system*, pp 5-19.

infrastructure charging framework under SPA'.[17]

In February 2013, the Government commenced a review of the maximum infrastructure charges framework with the object of establishing a framework that is 'equitable, certain and strikes a balance between local authority sustainability and providing confidence to the development industry when planning projects'.[18] The explanatory notes stated that one of the Bill's policy objectives is to establish such a framework. This policy objective, which is intended to commence on 1 July 2014, is intended to be achieved through the elements discussed in this part of the report.[19]

2.2 Policy developments

The amendments proposed to the *Sustainable Planning Act 2009* (SPA) and *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (SEQ Water Act) are part of a broader infrastructure reform agenda. There are no changes proposed to the maximum charges framework; however the government has developed a new 'fair value schedule of charges' and a 'Priority Development Infrastructure Co-investment Program'.

'Fair value charges' are said to be generally 10 per cent below the residential caps and 15 per cent below the current non-residential caps. Local authorities who reduce their infrastructure charges below the fair value levels will be able to access the co-funding program (a new stream of funding) to support the delivery of other infrastructure. This is said to provide an incentive to local authorities to reduce infrastructure charges. The program is currently being finalised and will be implemented from 1 July 2014.[20]

Whilst this is a related policy consideration, it has not formed part of the Bill. Therefore, the committee has not provided any comments in relation to the policy. However, there were a number submitters who commented on the proposal and the committee encourages the department to take on board the views of submitters in order to fine tune any parts of the policy by the implementation date.

2.3 Infrastructure charges reforms proposed by the Bill

Identification of trunk infrastructure

Trunk infrastructure is 'higher-level infrastructure that is shared between multiple developments' (for example, sewer mains and water treatment plants). Generally, trunk infrastructure is identified in a local government's Priority Infrastructure Plan (PIP) or for those without a PIP, their adopted charges resolution. A distributer-retailer will identify trunk infrastructure in their schedule of works or Water Netserv Plans.[21] PIPs 'include detailed plans for the provision of infrastructure; the costs of that infrastructure; and supporting information used to draft a PIP'.[22]

Infrastructure that is not detailed in a PIP or Netserv Plan is deemed non-trunk. Non-trunk infrastructure is 'infrastructure that is generally not shared with other developments and is generally internal to a development site' (for example, access streets within a residential subdivision and

[17] Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Bill 2011 (Qld), Explanatory Notes, p 2.
[18] Explanatory Notes, p 1
[19] Queensland Government, Department of State Development, Infrastructure and Planning, Discussion paper: Infrastructure planning and charging framework review, p 8.
[20] Queensland Parliament, Record of Proceedings, 8 May 2014, p 1430; Public briefing transcript, pp 2; 7; and 16-17.
[21] Explanatory Notes, p 3; *Sustainable Planning Act 2009*, Schedule 3, definition of 'trunk infrastructure'. The Bill proposes to rename Priority Infrastructure Plans to Local Government Infrastructure Plans (LGIP).
[22] Explanatory Notes, p 3.

infrastructure connecting development to trunk infrastructure). A developer is required to provide non-trunk infrastructure for a development.[23]

When developing their long-term infrastructure plans, it is not always possible for local authorities to incorporate every development scenario and the trunk infrastructure they may require. Accordingly, additional trunk infrastructure is required when a new development or water connection is proposed.[24]

> *There is currently a provision in SPA that allows local government to identify infrastructure that is not within its priority infrastructure plan as trunk. At the moment the way the system is set up is that trunk infrastructure is anything that is identified within a local government priority infrastructure plan. If it is not within that priority infrastructure plan, then it automatically becomes non-trunk. But there is a provision within the act currently today that allows a local government to call things that are not in that plan trunk.*
>
> *What is not there at the moment is a process by which the development sector can then bring forward a submission and the actual parameters for that. That is what we are creating with the new bill.*[25]

Process for converting non-trunk infrastructure to trunk infrastructure

The Bill provides that an applicant for a development approval or water approval can apply to a relevant local authority to have non-trunk infrastructure, that is the subject of a condition of a development approval, converted to trunk infrastructure (a 'conversion application').[26] A benefit of this for developers is they can then apply for an offset against the infrastructure charge or a refund.[27]

A local authority that receives a conversion application has to make a decision on the application within 30 business days, or, if further information is required, within 30 business days of the requirement being complied with. The local authority must give the applicant notice of the decision as soon as practicable after the decision is made.[28]

If the decision is not to convert non-trunk infrastructure to trunk infrastructure, the notice must be an information notice about the decision. The notice must state:[29]

- the decision and the reasons for it,
- that its recipient may appeal against the decision, and
- how the recipient may appeal.

If the decision is to convert non-trunk infrastructure to trunk infrastructure, the notice must state whether an offset or refund applies, and if so, provide details of the offset or refund. [30]

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[23] Explanatory Notes, p 4; Queensland Government, Department of State Development, Infrastructure and Planning, Discussion paper: Infrastructure planning and charging framework review, p 23; Department of Local Government and Planning, *Infrastructure Charges Reform Bulletin*, Trunk and non-trunk infrastructure, 3 November 2011, http://www.dsdip.qld.gov.au/resources/newsletter/ict-bulletin/ict-bulletin-4.pdf.

[24] Explanatory Notes, p 3.

[25] Public briefing transcript, p 5.

[26] Explanatory Notes, p 3; Clause 18: Proposed new Chapter 8, Part 2, Division 3, Subdivision 1.

[27] See, for example, Cassowary Coast Regional Council, Submission No. 10; City of Townsville, Submission No. 31.

[28] Proposed new section 661.

[29] Proposed new sections 627 and 661. Appeals are discussed below.

[30] Proposed new section 661.

If the local authority decides to grant a conversion application, the condition of the relevant development approval requiring the non-trunk infrastructure to be provided no longer has effect. Within a set period, the local authority may amend the development approval by imposing a necessary infrastructure condition for the trunk infrastructure.[31] If a necessary infrastructure condition is imposed, the local authority must also do either of the following within 10 business days:

- give an infrastructure charges notice, or
- amend, by notice to the applicant, any existing infrastructure charges notice for the development approval.

The Bill proposes to insert similar provisions about infrastructure charges into the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.[32]

Issues raised by submitters

Concerns about the proposed amendments

The majority of local government submitters expressed concern about the proposed conversion process. Their key concerns were:

- the potential shift of financial costs from the development industry to local governments and hence the community,
- uncertainty about the process,
- the increased likelihood of out-of-sequence development,
- the superfluity of the provisions, and
- the ability of applicants to appeal the decision.[33]

Financial costs

If the local authority decides to convert non-trunk infrastructure to trunk infrastructure, the applicant may be entitled to receive an offset or refund.[34] A conversion thus enables developers to lower their costs, with councils required to make up the difference to fund the infrastructure. Sunshine Coast Council stated that '[p]roviding such offsets has the potential to diminish and possibly remove entirely, Council's revenue from Infrastructure Charges'.[35]

Uncertainty

Noosa Council did not object to the conversion process on the basis that it is already accepted practice, however, it was concerned about the uncertainty the process may introduce for local governments. Similarly to the LGAQ, Noosa Council submitted the time for making conversion applications is open-ended. This is because the construction of infrastructure may occur many years (i.e. 4+ years) after the development permit has been approved.[36]

[31] 'Necessary infrastructure condition' is a particular condition imposed on the development approval under proposed new sections 646 and 647.
[32] See Clause 45: Proposed Part 7, Division 5, Subdivision 1.
[33] Appeals are discussed below.
[34] Proposed new section 661.
[35] Sunshine Coast Council, Submission No.7.
[36] Local Government Association of Queensland, Submission No. 20; Noosa Shire Council, Submission No. 6.

The Sunshine Coast Council submitted the Bill does not specify what infrastructure may be converted and as such 'presents significant concern for local government and (perhaps) unrealistic expectations in the development industry'.[37]

Logan City Council expressed concern about having to fund 'deemed trunk' infrastructure in different development areas. It suggested the Bill 'will create uncertainty and delay in the development assessment process as local governments will be apprehensive to approve these types of developments as a way to manage [their] financial risk'.[38]

The Bill provides that a regulation may prescribe the criteria by which the local authority is to decide the application. The regulation has not been made available for comment which creates uncertainty for stakeholders. In addition, the committee is limited in its ability to scrutinise all aspects relating to the conversion process.

It is also unclear whether local authorities may charge a fee for the submission of a conversion application.[39] The Queensland Environmental Law Association (QELA) queried whether it would be beneficial for proposed new section 659 to list the information that should be provided with a conversion application.

Out-of-sequence development

Logan City Council submitted that the proposed process of enabling a developer to make a conversion application is likely to result in an increase of development that is out-of-sequence with priority infrastructure plans.[40] Out-of-sequence development bears greater infrastructure costs for councils as a result of having to provide and maintain trunk infrastructure that has not been planned for.[41]

Noosa Council submitted that local governments' PIPs go through a full consultation process and are approved by the state, therefore if applicants wish to develop out-of-sequence, they should be responsible for providing the relevant infrastructure.[42]

Duplication of processes and regulatory burden

A number of local governments considered that the current Integrated Development Assessment System (IDAS) process already enables decisions about trunk infrastructure to be made.[43] Logan City Council, for example, considered the current conditioning powers for necessary trunk infrastructure and additional trunk infrastructure costs as well as powers to enter into infrastructure agreements are sufficient to ensure 'both the financial sustainability of local governments and the feasibility of developments.' These mechanisms also provide 'flexibility for local governments to adapt network planning where suitable alternatives are proposed by developers'.[44] Additionally, Moreton Bay Regional Council submitted that the new process adds greater regulation, which is contrary to the planning reform agenda.[45]

37 Sunshine Coast Council, Submission No. 7.
38 Logan City Council, Submission No. 16.
39 Queensland Environmental Law Association, Submission No. 29.
40 Logan City Council, Submission No. 16; see also: Public hearing transcript, p 8.
41 Logan City Council, Submission No. 16.
42 Noosa Council, Submission No. 6.
43 Local Government Association of Queensland, Submission No. 20; Mackay Regional Council, Submission No. 23; Moreton Bay Regional Council, Submission No. 28.
44 Logan City Council, Submission No. 16.
45 Moreton Bay Regional Council, Submission No. 28.

Support for the proposed amendments

Some submitters expressed strong support for the proposed amendments. The Housing Industry Association, for example, stated that '[t]he ability to have infrastructure recognised as trunk infrastructure provides the much needed flexibility in recognition that not all scenarios can be catered for'.[46] Planning Institute Australia welcomed the introduction of trunk conversion applications and suggested amendments, including enabling trunk conversion applications to be made after the construction of the infrastructure.[47]

Departmental response

In response to the submissions, the department advised the committee the process for applying to convert non-trunk infrastructure to trunk infrastructure was thoroughly canvassed in stakeholder workshops held in early 2014. The consultation confirmed that the conversion process was necessary 'to ensure all applicants have access to offsets and refunds in the circumstance where they are conditioned by the local authority to provide infrastructure that is serving a trunk function'.

The department considered that stakeholder concerns were addressed in the Bill by the provisions which:[48]

- *ensure an applicant can only use the conversion process in relation to non-trunk infrastructure that it has been conditioned by the local authority to provide, and*
- *provide local authorities with a more efficient and effective process for updating their infrastructure planning.*

  Despite the concerns raised by local authority stakeholders, the need for a conversion process is considered necessary to ensure all applicants have access to offsets and refunds in the circumstance where they are conditioned to provide infrastructure that is serving a trunk function.

Committee comment

The committee acknowledges the concerns raised by submitters in relation to the new application process to convert non-trunk infrastructure to trunk infrastructure. It is recognised that both local authorities and developers cannot always foresee every development scenario. Equally, a local government may not have identified every item of trunk infrastructure in its long-term plan, and a developer may wish to comment on whether non-trunk infrastructure that it has been conditioned to provide should be considered trunk. On balance, the committee considers the new application process provides a reasonable solution for both parties.

As an aside, the committee notes the department has recently consulted with stakeholders in relation to the guideline to include the proposed methodology to calculate the cost of infrastructure in certain circumstances.[49] The committee commends the department for its effective consultation on the proposals and also recommends the department consult with stakeholders during its preparation of the criteria for determining a conversion application to be included in the regulation [refer Recommendation 2].

[46] Housing Industry Association, Submission No.19. See also, for example, Queensland Tourism Industry Council, Submission No. 21; Queensland Law Society, Submission No. 22; Urban Development Institute of Australia, Submission No. 27.

[47] Planning Institute Australia, Submission No. 37.

[48] Department of State Development, Infrastructure and Planning, Correspondence dated 20 May 2014.

[49] Public hearing transcript, pp 33-34; Department of State Development, Infrastructure and Planning, Tabled Paper, 21 May 2014.

Infrastructure Planning

Currently, all local governments are required to adopt a priority infrastructure plan (PIP) in their planning scheme. To date however, many local governments do not have a PIP in place.[50]

The Bill proposes to rename PIPs as Local Government Infrastructure Plans (LGIPs), which is considered to more accurately reflect the purpose of the plan. From 1 July 2016, a local government will only be able to levy an infrastructure charge or impose a condition about trunk infrastructure if it has adopted a LGIP in its planning scheme.[51]

The Bill proposes to continue the requirement for five yearly reviews of the plans. In conducting the review, the local government must consult with the entities that participated in preparing the LGIP and if relevant, the distributor-retailer.[52]

The explanatory notes stated that it is intended the plan making statutory guideline will be redrafted to enable 'simpler and more efficient' infrastructure plan preparation.[53] This will allow local governments to 'update their LGIPs in the interim through an abbreviated process that will not involve the State'.[54]

Some local governments expressed concerns about the preparation of LGIPs including:

- the time to prepare an LGIP,
- the transition of PIPs scheduled to commence on 1 July 2014,
- the requirement that local governments consult with the entities that participated in preparing the LGIP, and
- a lack of information about the statutory guideline.

Cairns Regional Council and the Far North Queensland Regional Organisation of Councils pointed out that some local governments with draft planning schemes have been loathed to prepare PIPs because of the impending 'wholesale reform of the infrastructure planning and charging framework'.[55] For example, Cairns Regional Council's draft planning scheme is currently with State agencies for review but it does not contain a PIP. The Council is concerned the transitional provisions do not cater for its position.[56] For the benefit of Cairns Regional Council and other councils in a similar position, the committee seeks clarification from the department on how councils should progress draft planning schemes and the preparation of LGIPs.

Brisbane City Council's new City Plan 2014, including its new PIP, is to commence on 1 July 2014. The council submitted that the PIP will not take effect as an LGIP under the Bill because it will not be an existing PIP at the time the proposed Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act takes effect.

The committee seeks clarification from the department in relation to how the transitional provisions may address these particular situations.

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50 Department of State Development, Infrastructure and Planning, *Local Government Priority Infrastructure Plans – Progress Schedule*, http://www.dsdip.qld.gov.au/resources/report/pip/pip-progress-schedule.pdf, Accessed 24 May 2014.

51 Explanatory Notes, p 4.

52 Proposed new section 94A.

53 Explanatory Notes, p 3.

54 Department of State Development, Infrastructure and Planning, Correspondence dated 20 May 2004.

55 Cairns Regional Council, Submission No. 3; Far North Queensland Regional Organisation of Councils, Submission No. 18.

56 Cairns Regional Council, Submission No. 3.

Point for clarification 1

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

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

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

Review of infrastructure plans

Proposed section 94A of the Bill provides that a local government must complete a review of their LGIP included in its planning scheme every five years after it was included in the scheme. In conducting the review, proposed section 94(2)(a) provides a local government must consult with the entities that participated in the preparation of the LGIP, including departments.

The LGAQ submitted it is currently unclear whether this requires councils to consult with the original consultants they engaged to prepare their PIPs/LGIPs and is of the view councils should not have to consult with the original consultants.[57] LGAQ submitted that proposed new section 94A should be amended to make it clear that a local government is not required to consult with the original consultants; rather, the review should only be required to be undertaken with the appropriate entities and departments, irrespective of whether they had been involved previously.

The committee considers it is reasonable that local governments should not be required to consult with any external consultants who were engaged to prepare their LGIP.

Recommendation 3

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

Statutory guideline

As noted above, the new plan making statutory guideline is not yet available. The City of Gold Coast submitted it would like clarification on what will be in it, 'in particular what the technical requirements will be for LGIPs and whether the guidelines will set out the desired standards of service for development infrastructure'.[58] Rockhampton Regional Council submitted it was not possible for the council to comment on clause 6 of the Bill because the guideline is not available.

The committee is also limited in its ability to comment on the expected changes to the PIP/LGIP preparation process because it too has not seen the plan making statutory guideline. The committee recommends the department consult with stakeholders during its preparation of the statutory guideline [refer to Recommendation 2].

[57] Local Government Association of Queensland, Submission No. 20. The LGAQ's submission was expressly supported by other submitters including Cairns Regional Council, Submission No. 3.

[58] City of Gold Coast, Submission No. 17.

Conditions, offsets and refunds

Infrastructure conditions are 'a mechanism through which the impacts of unplanned or out-of-sequence development on existing and future infrastructure networks are managed'.[59] Local authorities can condition a development approval or water approval to supply essential infrastructure or provide land. The Bill proposes to require the local government to state which legislative provision it is relying on when it imposes a condition.[60]

Currently, the value of offsets and refunds is determined through a negotiation process and set out in an infrastructure agreement. There is no requirement to provide offsets or refunds for unidentified infrastructure. The Bill includes a process for determining the value of offsets and refunds in a local government's infrastructure charges resolution or a distributor-retailer's board decision.[61] Proposed new section 633 provides that the method must be consistent with the parameters for the purpose provided under the State Planning Regulation Provision (adopted charges) or otherwise, a guideline made by the Minister and prescribed by regulation.

The Bill also clarifies the requirement for a local authority with respect to providing an offset or refund in particular circumstances (for example, where a development or water approval has been conditioned to provide trunk infrastructure).[62]

The Large Format Retail Association (LFRA) and the Queensland Tourism Industry Council strongly supported the requirement proposed in new section 637 that the infrastructure charges notice include details of any offset or refund applicable to a development.

Calculating cost of infrastructure

Cassowary Coast Regional Council submitted that it 'disagrees with the requirement for the charges resolution to include a method for working out the cost of infrastructure the subject of the offset or refund'.[63] The council was of the view that both the decision whether to provide an offset or refund and the method of costing the infrastructure should be left to council to determine on a case by case basis.[64]

Cassowary Coast Regional Council further stated that there is no detail provided about the methodology referred to in the Bill.[65] The council is concerned that, 'if it is based on the actual cost of the infrastructure, then in combination with proposed section 657, an applicant can elect to use the establishment cost of infrastructure or the actual cost of infrastructure to calculate an offset or refund, depending on what will provide the maximum refund'.[66] It considered that this should not be permitted and that there should only be one method for calculating infrastructure costs for the purposes of offsets and refunds.[67]

Mackay Regional Council submitted proposed new section 633 'has the potential for significant cost impost on ratepayers' because it enables developers to always select the option which provides the

59 Explanatory Notes, p 4.
60 Ibid.
61 Ibid.
62 Ibid.
63 Cassowary Coast Regional Council, Submission No. 10. See also, Far North Queensland Regional Organisation of Councils, Submission No 18.
64 Cassowary Coast Regional Council, Submission No. 10.
65 See also, for example, Local Government Association of Queensland, Submission No. 20.
66 Cassowary Coast Regional Council, Submission No. 10.
67 Ibid.

highest return.[68] Toowoomba Regional Council identified similar issues, though its concerns centred on the definition of 'establishment cost'.

The Queensland Environmental Law Association was concerned that local authorities may have difficulty estimating the cost of trunk infrastructure given the limited time before an infrastructure charges notice is required to be given, which may lead to delays in the assessment of development applications and additional appeals.[69]

The LGAQ does not currently support the offset and refund provisions. It requested that consultation be undertaken with local governments in preparing the guideline because the guideline 'will have significant bearing for local government in the way costs for infrastructure and offsets are to apply'. It further submitted, 'This will help ensure avoidance of any onerous or impractical requirements creating unnecessary costs being inadvertently incurred by local government and the community'.[70]

At the committee's public hearing, the department advised the committee that it had been consulting with stakeholders on draft guidelines to calculate the value of infrastructure and tabled a copy of an email and attachment (Guideline – Standard processes for determining the value of infrastructure or land under certain circumstances).[71]

As noted above, not all the information required for working out the cost of infrastructure for offset or refund is currently available,[72] and thus the committee is unable to comment fully on the impact of the proposed provisions. The committee recommends the department continue to consult with stakeholders during the preparation of the guideline [refer Recommendation 2].

Offset or refund requirements

Logan City Council stated that providing offsets and refunds for 'deemed trunk' infrastructure for the actual cost incurred by a developer 'significantly [impacts] on the ability of a local government to manage its planned procurement of infrastructure' by 'proposing mandatory offsets (and refunds where applicable) for items of infrastructure that have not been planned by the local government, and for an actual cost that will not be known at the time of the development approval'. The council recommended proposed new section 649(2) be omitted and 'ensure the SPRP does not require the application of "actual" value to offsets and refunds'. It was further suggested the provisions relating to cross crediting should also be removed.[73]

In addition to the concerns outlined above, the Far North Queensland Regional Organisation of Councils noted some uncertainty about the effect of the provision:[74]

> *The way section 649(2) is currently drafted, it appears the cost of constructing a road would be offset against charges levied for water, sewerage and other infrastructure networks, not just the transport network infrastructure charge. This is considered inequitable and has the potential to impact on Councils' ability to finance works on its infrastructure network, if ultimately all the contributions made by an applicant as part of a development is being directed to a single infrastructure item.*

[68] Mackay Regional Council, Submission No. 23.
[69] Queensland Environmental Law Association, Submission No. 29.
[70] Local Government Association of Queensland, Submission No. 20.
[71] Public hearing transcript, p 33. The tabled paper is available on the committee's website.
[72] See also City of Gold Coast, Submission No.17; Mackay Regional Council, Submission No. 23; Moreton Bay Regional Council, Submission No. 28.
[73] Logan City Council, Submission No. 16. See also, Far North Queensland Regional Organisation of Councils, Submission No 18.
[74] Ibid.

The submitter further stated this may mean that councils could be liable to unbudgeted, undetermined financial liabilities.[75]

Conversely, LFRA, which was in favour of cross-crediting, was concerned that the Bill does not make it mandatory.[76]

Brisbane City Council stated the proposed provision would have a significant financial impact on local governments and that refunds would have to be paid from general revenue rather than from charges collected. The council was, however, uncertain whether the definition of establishment cost is applicable to the calculation of the refund. It suggested that the uncertainty of the provision 'may give rise to ongoing appeals and administrative costs'.[77]

The committee seeks clarification from the Deputy Premier in relation to the intended effect of proposed new section 649 and the reason for its inclusion in the Bill.

Point for clarification 2

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

Adoption of infrastructure charges

The Bill proposes to change the time from which infrastructure charges become effective from the date a local government makes a resolution or a distributor-retailer adopts the charges, to the date when the charges are uploaded to the local entities' website, or a stated later date.

The Bill also proposes to enable participating local governments and distributor-retailers to enter into an agreement about how the maximum infrastructure charge will be apportioned to each entity. Each entity can adopt infrastructure charges within their portions and the apportionment must also be published.

The committee supports all measures in the Bill, such as this, that are intended to improve transparency and certainty.

Charges limitation

At present, local authorities are able to adjust the amount of the charge payable when levying an infrastructure charge to account for existing development rights but there is no consistent methodology used for calculating the amount. Proposed new section 636 of the Bill introduces mandatory credits for existing lawful use rights.

Many local government submitters were concerned about this provision.[78] They were particularly concerned that existing approvals for which infrastructure charges were not paid, must be credited.[79] Cairns Regional Council advised the committee that there may be some circumstances in which

[75] Far North Queensland Regional Organisation of Councils, Submission No 18.

[76] Large Format Retail Association, Submission No. 13. Planning Institute Australia is also in favour of mandatory cross crediting: Planning Institute Australia, Submission No. 37.

[77] Brisbane City Council, Submission No. 30.

[78] Cassowary Coast Regional Council was of the view that providing credit for existing lawful uses is a matter that should be left to the discretion of local governments: Cassowary Regional Council, Submission No. 10.

[79] See for example, Cairns Regional Council, Submission No. 3; Sunshine Coast Regional Council, Submission No. 7; Cassowary Coast Regional Council, Submission No. 10; Toowoomba Regional Council, Submission No. 11; Far North Queensland Regional Organisation of Councils, Submission No. 18; Rockhampton Regional Council, Submission No. 34; Local Government Association of Queensland, Submission No. 20.

existing development approvals are not acted upon and are superseded by a later application. Under proposed new section 636, the lawful use rights are creditable even if the infrastructure charges relating to the development approval were not paid.[80] Rockhampton Regional Council submitted that this situation is 'clearly unreasonable and probably unintended'.[81] The LGAQ recommended proposed new section 636 be amended to ensure credits are only provided where contributions have been made for specified networks.[82]

Unitywater had similar concerns to the local governments in relation to when a charge may be levied. It submitted that under proposed new section 99BRCJ(2)(a) of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* 'an existing approval that has not been acted upon and that has not actually utilised any existing demand must be excluded from the calculation of the adopted charge.' It suggested the provision 'should be refined to avoid the unintended consequence … and to ensure that infrastructure charging is not unreasonably limited'.

The committee recognises the concerns of local authorities and recommends the Bill be amended to ensure that credit is not provided for development for which infrastructure charges were not paid.

Recommendation 4

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

Sunshine Coast Council submitted that in order to reduce red tape, it has made some forms of development, self-assessable. It submitted that under the proposed amendments, it will not be able to levy infrastructure charges on privately certified building approvals.[83]

Similarly, in relation to not being able to include development that may be lawfully carried out without the need for a further development permit in the levied charge, Unitywater submitted that it is '... not fair to impose this limitation on distributer-retailers as they may be required to provide additional capacity in their networks to serve the development'.[84]

The committee seeks clarification from the Deputy Premier and Minister for State Development, Infrastructure and Planning on whether it was intended that self-assessable development be exempt from inclusion in the determination of additional demand.

[80] Cairns Regional Council, Submission No. 3.

[81] Rockhampton Regional Council, Submission No. 34.

[82] Local Government Association of Queensland, Submission No. 20. A similar recommendation was made by Rockhampton Regional Council, Submission No. 34. With respect to networks, Toowoomba Regional Council considered that proposed new section 636 'assumes that all existing lawful uses have access to all networks'. This, the council submitted, 'is not always the case, with many existing lawful uses not being serviced by reticulated water or sewerage'. In these instances, the council considered that it 'should be able to charge for the demand of the existing lawful use (or other development) for those networks which are not provided': Toowoomba Regional Council, Submission No. 11.

[83] Sunshine Coast Council, Submission No. 7.

[84] Unitywater, Submission No. 38.

Point for clarification 3

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

Point for clarification 4

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

City of Gold Coast sought clarification of the term 'existing uses that are lawful' given that it is a departure from the defined term 'lawful use' in section 9 of SPA.[85]

Some submitters expressed support for the requirement for existing use credits but were dissatisfied with the proposed provision.[86] RPS, for example, considered that the provision is too limited in its application. It submitted that brownfield redevelopment sites are often unused at the time a development approval or changed approval is sought and thus existing use credits should be applied if evidence can be produced that a lawful use has previously occurred on the land. It also argued that previous payments for infrastructure charges should be creditable. The Property Council of Australia and Shopping Centre Council of Australia, and LFRA made similar suggestions.[87]

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

Point for clarification 5

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

Infrastructure agreements

Infrastructure agreements (IAs) are used by local authorities and proponents as a mechanism for negotiating other arrangements outside of the maximum charges framework, for example, infrastructure charge contributions, and offset and refunds.

During the department's consultation on the proposals, stakeholders indicated that IAs were expensive and complex to prepare with little guidance provided by the SPA. There were also

[85] City of Gold Coast, Submission No. 17.
[86] See, for example, RPS, Submission No. 2.
[87] Property Council of Australia and Shopping Centre Council of Australia, Submission No. 9; Large Format Retail Association, Submission No. 13.

concerns raised about the requirement for local governments to establish an infrastructure agreement as a condition of a development approval. It was noted during the 2012 review on the maximum charges framework that some local governments avoided entering into IAs as a result of their complexity.[88]

Proposed Part 4 of Chapter 8 of the Bill provides provisions for infrastructure agreements. The intent of IAs is to reach a voluntary agreement negotiated between parties with no obligation to reach an agreement. The explanatory notes indicated the Bill strengthens this position by setting a limit on local authorities from conditioning a development approval or water approval from requiring the negotiation of an IA.[89] Additionally, proposed section 671 provides that there is an obligation on all parties to negotiate an agreement in good faith.

Some submitters specifically expressed support for IAs, and others have suggested minor amendments or clarification to the proposed provisions.[90]

Obligation to negotiate in good faith

For example, QELA noted an apparent drafting error in the note contained in proposed new section 671. The note contains examples of actions that are considered to be in good faith for the purposes of subsection (3).[91] The note incorrectly references subsection (2). The committee recommends the provision be amended to rectify the error.

Recommendation 5

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

Other submitters suggested that the obligation to negotiate in good faith adds complexity to the infrastructure charging and conditioning regime and would be difficult to enforce.[92] The Property Council of Australia and the Shopping Centre Council of Australia submitted that coercion into IAs will still occur and are concerned councils will stall an application to compel an applicant into an IA.[93]

QELA further submitted:[94]

> *... the examples contained in proposed new section 671 are not exhaustive and having regard to section 14D of the* Acts Interpretation Act 1954*, may extend the meaning of the provision.*
>
> *... "the intention of this [new requirement] is to encourage open, timely and cost effective negotiation of infrastructure agreements" however, the new requirement (and accompanying examples) may result in a negotiated infrastructure agreement being challenged due to non-compliance with the proposed obligation to act in good faith.*

88 Department of State Development, Infrastructure and Planning, Infrastructure Planning and Charging Framework Review Discussion Paper, p 60.

89 Explanatory Notes, p 6; Clause 8, proposed amendment of section 347 of the *Sustainable Planning Act 2009*.

90 Those supporting infrastructure agreements, see for example: RPS, Submission No. 2; Sippy Downs and District Community Association, Submission No. 8.

91 Queensland Environmental Law Association, Submission No. 29.

92 Cassowary Coast Regional Council, Submission No. 10; Planning Institute of Australia, Submission No. 37.

93 Property Council of Australia and Shopping Centre Council of Australia, Submission No. 9.

94 Queensland Environmental Law Association, Submission No. 29.

... parties [can] bring declaratory proceedings in the Planning and Environment Court in relation to a matter that should have been done under the SPA which would include negotiating in good faith under the proposed new section. Declaratory proceedings can also be brought in relation to the construction of the SPA. Such proceedings have the potential to result in delayed and more costly negotiations of infrastructure agreements, in contrast to the stated intention of the new section in the Explanatory Notes for the Bill.

Recommendation 6

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

Copy of infrastructure agreement to local government

Proposed section 673 requires a public sector entity to provide a copy of an infrastructure agreement to a local government if the local government is not a party to the agreement. Brisbane City Council submitted the provision excludes a distributor-retailer from having to provide Council with a copy of an infrastructure agreement as they are not included in the definition of public sector entity.[95]

Point for clarification 6

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

Infrastructure agreement prevailing over a development approval and charges notice

Proposed section 676 provides that if an infrastructure agreement is inconsistent with a development approval or infrastructure charges notice, the agreement prevails to the extent of the inconsistency. Queensland Law Society commented on this provision:[96]

... 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. ... it actually should be that the agreement is consistent with the development approval. ... 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.

[95] Brisbane City Council, Submission No. 30.

[96] Queensland Law Society, Public hearing transcript, 21 May 2014, p 27.

Committee comment

The committee considers infrastructure agreements are a valuable mechanism for negotiating mutually beneficial outcomes for proponents and local authorities and supports the proposed amendments, particularly the new provision encouraging parties to negotiate in good faith.

The committee sees merit in the issue highlighted by the Queensland Law Society in relation to proposed section 676 and recommends the Bill be amended to ensure that an infrastructure agreement cannot override a development approval decision of the Court.

Recommendation 7

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

Appeals and dispute resolution

Clauses 9 and 12 of the Bill relate to appeal rights. The Bill provides 'new appeal rights to both the Planning and Environment Court and the Building and Development Dispute Resolution Committees regarding the conversion of non-trunk infrastructure to trunk infrastructure.'[97]

The Bill also clarifies the scope of existing appeal rights in relation to an infrastructure charges notice levied by a local authority as well as for offsets and refunds. The maximum charges set by local governments or distributer-retailers remain unable to be appealed.[98]

The department advised the committee:[99]

> *There were concerns raised by both the development sector and local government that in the way the provisions are currently drafted it is not clear exactly what is appealable, and what people were wanting was further clarity about what exactly can you appeal in terms of an infrastructure charge.*
>
> *So what we have made very clear in here is that the infrastructure charge amount that the local government sets through their resolution... is not appealable. ... What the developer can actually appeal is the way that rate has been applied.*
>
> ...
>
> *There is also the ability for the developer to take their appeal to the building and development committee. This is something we have strengthened through the provisions in the act, that the committee can hear these matters as well. So we are seeing that there is that more cost-effective and time-effective avenue for developers to go through, rather than taking it through to the Planning and Environment Court...* [100]

Some local governments were concerned about, or opposed to the new appeal process on the basis that it would increase uncertainty and create additional costs and delays.[101] Other bodies were supportive of the new appeal right.[102]

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97 Explanatory Notes, p 5. Building and Development Dispute Resolution Committees are established under Chapter 7 of the *Sustainable Planning Act 2009* and hear and decide matters relating to decisions of local government and private certifiers (e.g. building matters; infrastructure charges; plumbing and drainage).

98 Explanatory Notes, p 5.

99 Public briefing transcript, pp 6-7.

100 Ibid, p 7.

101 See for example: Noosa Shire Council, Submission No. 6; City of Gold Coast, Submission No. 17; Local Government Association of Queensland, Submission No. 20; Logan City Council, Submission No. 16.

> *This poses significant implications for local governments' infrastructure, planning, budgeting, capital programming, prioritisation and legal costs.*[103]

The department provided the rationale for including a right of appeal for a decision about the conversation of non-trunk infrastructure to trunk infrastructure:[104]

> *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..*
>
> *...*
>
> *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.*

Timing of approval process and appeals

Both the LGAQ and the Property Council of Australia were of the view that a dispute or appeal process should be separate to the approval process in order to provide certainty and avoid unnecessary delays for developments.[105]

The concerns from the LGAQ centred on the uncertainty created by the conversion process from non-trunk to trunk infrastructure compounded the new appeal rights for that process, and the timing of both processes:[106]

> *The adjudication of that matter [conversions] 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.*

The Property Council of Australia provided similar comments:[107]

> *... 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.*

[102] See for example: Planning Institute of Australia, Submission No. 37; Large Format Retail Association, Submission No. 13.
[103] Public hearing transcript, 21 May 2014, p 3.
[104] Ibid, pp 32-33.
[105] Ibid, p 5 & 13.
[106] Ibid, p 5.
[107] Property Council of Australia, Public hearing transcript, 21 May 2014, p 13.

Other issues and recommendations from submitters included:

- that proposed section 478(2)(a) of the Bill relating to appeals on the grounds of 'unreasonableness' be removed. Or insert a new sub-clause to provide an adopted charge issued strictly in accordance with the adopted charges cannot be appealed on the ground of *Wednesbury* unreasonableness.[108]
- that proposed section 478(3)(b) of the Bill be amended by removing 'for a decision about an offset or refund'. If retained, there should be a definition of the term 'methodology'.[109]
- the prohibition of appeals should also be extended to originating applications.[110]
- inclusion of the word 'relevant' in proposed new section 478(2)(a) (provision carried over from the SPA) is extraneous.[111]
- that no appeals be allowed for development 'that sits outside the accepted and legislated planning process as the trunk infrastructure detailed in the PIP or LGIP has already undergone the full preparation and development process in accordance with statutory guidelines and approved by the State Government'.[112]
- the process for seeking a review of an infrastructure charges notice set out in proposed Subdivision 5 is unnecessarily complicated and should be simplified.[113]
- concerned about uncertainty and further transfer of risk that may result from proposed new section 535 and should be revisited.[114]
- proposed new section 478 is not explicit enough in its intent to appeal a charge imposed for infrastructure that is not affected by a development.[115]

In response to the issues raised the department stated:[116]

> *Improving the dispute resolution processes in relation to infrastructure matters was a key issue raised by stakeholders during the infrastructure framework reform. Additionally, the new grounds for appeals are to be implemented with a number of other reforms which should reduce the need for appeals i.e. ability to change an infrastructure charges notice to take account of a permissible change. Also, the ability to appeal decisions which effect stakeholders is a fundamental legislative principle.*

Committee comment

The committee recognises that as a result of the extensive consultation undertaken by the department, the issues raised by submitters are not new to the department.[117] Regardless of this, the committee needs to consider each issue and recommendation on their own merits. In the absence of a detailed response from the department, the committee has found responding to the detailed issues raised by submitters to be quite difficult. Accordingly, the committee recommends the Deputy

[108] City of Gold Coast, Submission No. 17; *Wednesbury unreasonableness* is a term used to describe an action or decision that is so unreasonable that no reasonable person would have reached it, arising from *Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223*.
[109] City of Gold Coast, Submission No. 17.
[110] Brisbane City Council, Submission No. 30.
[111] Ibid.
[112] Local Government Association of Queensland, Submission No. 20.
[113] Cassowary Coast Regional Council, Submission No. 10.
[114] Rockhampton Regional Council, Submission No. 34.
[115] Property Council of Australia and Shopping Centre Council of Australia, Submission No. 9.
[116] Department of State Development, Infrastructure and Planning, Correspondence dated 21 May 2014.
[117] Public hearing transcript, p 29.

Premier and department consider the issues relating to the appeal provisions [refer to Recommendation 2].

In terms of the broader issues relating to appeal rights, the committee supports the addition of the new appeal right in relation to the conversion of non-trunk and trunk infrastructure and the clarification of matters that are appealable, in order to provide greater certainty. The committee notes the concerns in relation to the potential uncertainty and delays that may be caused by the new appeal right, but it did not receive any substantial evidence to suggest there would be a large increase in the number of matters proceeding to an appeal. Most issues ought to be resolved through negotiation between parties at the time of the approval process and via existing planning processes. The committee considers it is important for parties that cannot agree to have a right of appeal, firstly to the Building and Development Dispute Resolution Committees (if applicable) and then to the Planning and Environment Court as a last resort.

Both the local government sector and development sector have raised the same issue in relation to the potential delay for a development during an appeal period. The committee does not have any information before it from the department in response to this issue, however the committee sees merit in an approval for a development taking effect despite an appeal in relation to a particular infrastructure charge, and recommends that an amendment be given further consideration.

Recommendation 8

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

2.4 Environmental approvals bilateral agreement

Bilateral agreement between the Queensland and Commonwealth Governments

In April 2012, the Council of Australian Governments (COAG) agreed to reform the administration of national environment regulation by establishing a 'one stop shop' for environmental approvals in order to reduce duplication in the assessment and approval processes while maintaining high environmental standards. The reform will be achieved through the negotiation of bilateral agreements between the Commonwealth and states/territories under existing provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act).[118]

On 18 October 2013, the Commonwealth and Queensland Governments signed a Memorandum of Understanding (MOU) to enable Queensland to make environmental approval decisions in relation to matters protected by the EPBC Act under an approval bilateral agreement. Under the agreement, Queensland would be able to conduct a single assessment and approval process that satisfies the requirements of both state and Australian Government.

[118] Australian Government, Department of Environment, 'Bilateral agreements', http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements; Australian Government, Department of Environment, 'Draft Framework of Standards for Accreditation and Statement of Environmental and Assurance Outcomes', http://www.environment.gov.au/resource/draft-framework-standards-accreditation-and-statement-environmental-and-assurance-outcomes.

On 14 May 2014, a Draft Approval Bilateral Agreement (the Agreement) was released for public consultation with submissions closing on 13 June 2014. Under the MOU, both governments agreed that an approvals bilateral agreement would be in place by September 2014.[119]

The purpose of the agreement is to facilitate the establishment of a 'one stop shop' for environmental approvals by:[120]

a. identifying the authorisation processes to be accredited by the Commonwealth Minister under section 46 of the EPBC Act, and

b. declaring that actions in a class of actions specified in Schedule 1 do not require approval under Part 9 of the EPBC Act for the purposes of the provisions of Part 3 of the EPBC Act specified in Schedule 1.

The objectives of the agreement are to:[121]

- ensure Australia complies fully with all its international environmental obligations,
- ensure matters of national environmental significance (MNES) are protected as required under the EPBC Act,[122]
- promote the conservation and ecologically sustainable use of natural resources,
- ensure an efficient, timely and effective process for environmental assessment and approval of actions, and
- minimise duplication in the environmental assessment and approvals processes of the Commonwealth and Queensland Governments.

Amendment of the *State Development, Public Works and Organisation Act 1971*

The Bill proposes to amend the *State Development, Public Works and Organisation Act 1971* (SDPWO Act) in order to facilitate the implementation of the agreement. Under the EPBC Act, mandatory requirements for an approvals bilateral agreement are specified, including the need for an 'authorisation process' to be made in State law and the process to meet Australian Government

[119] Commonwealth and Queensland Governments, *Draft Approval Bilateral Agreement*, p 3; Hon A Powell, Minister for Environment and Heritage Protection, Media release, *Final stage reached on federal environmental approvals in Queensland*, 14 May 2014; Queensland Parliament, Record of Proceedings, 8 May 2014, p 1432; Explanatory Notes, pp 2-3; Department of State Development, Infrastructure and Planning, Correspondence dated 20 May 2014.

[120] Commonwealth and Queensland Governments, *Draft Approval Bilateral Agreement*, p 3.

[121] Explanatory Notes, p 2.

[122] Under the EPBC Act, actions that have, or are likely to have, a significant impact on a matter of national environmental significance require approval from the Australian Government Minister for the Environment (the Minister). The Minister will decide whether assessment and approval is required under the EPBC Act. The nine matters of national environmental significance protected under the EPBC Act are: world heritage properties; national heritage places; wetlands of international importance (listed under the Ramsar Convention); listed threatened species and ecological communities; migratory species protected under international agreements; Commonwealth marine areas; the Great Barrier Reef Marine Park; nuclear actions (including uranium mines); a water resource, in relation to coal seam gas development and large coal mining development. Other matters protected are: the environment, where actions proposed are on, or will affect Commonwealth land and the environment; and the environment, where Commonwealth agencies are proposing to take an action. See: Commonwealth Department of Environment, *Matters of national environmental significance*, http://www.environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999/what.

environmental standards.[123] The environment standards are detailed in *Standards for Accreditation of Environmental Approvals under the EPBC Act* (Standards document).

The department advised there is a need for both the Agreement and the Standards document to be considered as part of the authorisation process:[124]

> *For the Commonwealth Environment Minister to accredit an authorisation process under an Approval Bilateral Agreement, that Minister must be satisfied that taken together a bilateral agreement and an accredited process must accord with the environmental standards set out in the Standards document.*

The proposed amendments to the SDPWO Act relate to the authorisation processes to enable the Coordinator-General (CG) to assess and authorise projects that may impact on EPBC Act protected matters.[125] The Bill proposes to insert new Part 4A into the SDPWO Act for coordinated projects that would proceed through the authorisation process.[126]

The explanatory notes state:[127]

> *The amendments enable the Coordinator-General to make an additional declaration where a 'coordinated project' declaration has been made. The Part 4A declaration would initiate the Coordinator-General's assessment of MNES and enable an environmental approval to be issued that replaces the need for an approval under the EPBC Act. The assessment requirements contained in Part 4 of the SDPWO Act would continue to apply.*

Specifically, the amendments to the SDPWO Act would:[128]

- create a new authorisation process for the taking of an action for the purposes of the approvals bilateral agreement,
- implement the decision making criteria of which the Commonwealth Minister must be satisfied under the EPBC Act to accredit the process,
- provide a conditioning power for impacts on MNES,
- provide for amendment, cancellation and compliance functions in relation to an environmental approval, and
- provide an expanded regulation-making power with respect to the authorisation process.

In the sections below, the committee deals with the issues raised by submitters in relation to the proposed amendments.

Assessment and approval of particular coordinated projects under bilateral agreements

The Bill proposes to insert new Part 4A in the SDPWO Act for coordinated projects that are to proceed through the accredited authorisation process:[129]

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[123] *Environmental Protection and Biodiversity Conservation Act 1999*, section 46 (2A).

[124] Department of State Development, Infrastructure and Planning, Correspondence dated 20 May 2014; Explanatory Notes, p 6.

[125] Also refer to Schedule 1 of the *Draft Approval Bilateral Agreement between the Commonwealth and Queensland Governments* for the declared class of actions, including actions that do not require approval under Part 9 of the EPBC Act.

[126] Department of State Development, Infrastructure and Planning, Correspondence dated 20 May 2014; Explanatory Notes, p 6.

[127] Explanatory Notes, p 6.

[128] Ibid, pp 6-7.

[129] Ibid, p 55.

> *The purpose of Part 4A is to specify the necessary procedures and decision-making requirements for an accredited authorisation process for the purposes of an approvals bilateral agreement. In many sections throughout Part 4A, the procedures and requirements are intended to mirror similar provisions of the EPBC Act.*

The committee notes the support expressed by some submitters for the proposed amendments in order to reduce duplication and streamline the environmental approvals process.[130] However, several submitters commented on the lack of time to consider the proposed amendments in detail[131] and also questioned the degree to which the amendments reflect the provisions of the EPBC Act as intended.[132]

Role of Coordinator-General as decision maker

The Bill would provide powers to the Coordinator-General to assess and approve particular coordinated projects in Queensland for the purposes of the EPBC Act following a 'bilateral project declaration'.[133]

Submitters expressed concern regarding the role of the Coordinator-General as a decision maker in this circumstance because of a perceived 'conflict of interest.' It has been suggested by both the Queensland Murray-Darling Committee (QMDC) and Environmental Defenders Office (EDO Qld) that because the Coordinator-General has a responsibility for promoting and approving developments that this may be in conflict with the proposed role to assess matters of national environmental significance. Both submitters considered this responsibility should rest with the Minister for Environment and Heritage Protection and the respective department with the required level of expertise.[134]

In response to this issue, the department advised that environmental standards would be maintained through the implementation of a 'strong assurance framework' consisting of the following elements:[135]

- national environmental standards that states and territories are required to meet to be accredited,
- performance assurance to ensure commitments are met under approval bilateral agreements, and
- outcomes assurance to ensure good outcomes for business and environment.

Further, the department stated the proposed amendments would ensure that decisions made by the Coordinator-General would be subject to the equivalent standards that apply to the Commonwealth Environment Minister:[136]

[130] Queensland Resources Council, Submission No. 25; Queensland Law Society; Queensland Tourism Industry Council, Submission No. 21; QGC, Submission No. 35.

[131] Queensland Law Society, Public hearing transcript, 21 May 2014, p 22; Queensland Environmental Law Association, Submission No. 29.

[132] Queensland Murray-Darling Committee, Submission No. 14; Queensland Industry Tourism Council, Submission No. 21; Queensland Law Society, Submission No. 21; Queensland Resources Council, Submission No. 25; QGC, Submission No. 35; and Environmental Defenders Office, Submission No. 36.

[133] Explanatory Notes, p 55.

[134] Queensland Murray-Darling Committee, Submission No. 14; Environmental Defenders Office, Submission No. 36; Environmental Defenders Office, Tabled document, Public hearing, 21 May 2014.

[135] Department of State Development, Infrastructure and Planning, Correspondence dated 20 May 2014.

[136] Ibid.

> *The intent of the amendments to the SDPWO Act combined with the draft approval bilateral agreement is to ensure that decisions made under the agreement are of equivalent standards to those made by the Commonwealth Minister.*

The committee notes that under clause 6 of the Draft Approval Bilateral Agreement, key requirements are identified for making an approval decision:[137]

> *The intent of clause 6 is to ensure that decision making in relation to actions that are likely to have a significant impact on a matter of national environmental significance is robust and meets EPBC Act requirements, and avoids unacceptable and unsustainable impacts on matters of national environmental significance.*

Committee comment

The committee supports the intent of the proposed amendments on the basis they will reduce duplication in the environmental assessment and approval processes between the Australian and Queensland Governments.

The committee is satisfied the existing framework for ensuring environmental standards are met addresses any concern regarding the role of the Coordinator-General as decision maker for particular coordinated projects that impact on MNES.

Further, the committee believes that clause 6 of the Draft Approval Bilateral Agreement clearly sets out the key requirements for the decision making process in accordance with the EPBC Act. Accordingly, the proposed amendments and the agreement provide sufficient assurances that the Coordinator-General's decisions in relation to proposed Part 4A would meet the standards that apply to the Commonwealth Environment Minister.

Ecological Sustainable Development

QMDC submitted the proposed amendments conflict with key environmental protection principles and move environmental policy away from ecological sustainable development principles (ESD). QMDC stated that 'decision-making on development is best guided by the long-established principles of ESD and Regional NRM Planning' and recommended the principles of ESD be inserted into the Bill.[138]

In addition, EDO Qld submitted the amendments are not clear enough to ensure that decisions are consistent with Australia's international obligations:[139]

> *Whilst the draft approval bilateral agreement clearly sets out what Qld should do – ensure that decision making "is not inconsistent" with EPBC requirements regarding international obligations (cl.6.3 approval bilateral agreement) – it is unclear whether this term of the approval bilateral agreement is enforceable.*
>
> *The only linkage is in the Bill's criteria for decision-making which simply says ensure the approval and conditions are "not inconsistent" with the bilateral agreement at s.54W(2)(b) SDPWOA.*

Accordingly, EDO Qld recommended the inclusion of mandatory prohibitions in the Bill to reflect sections 137 to 140 of the EPBC Act, specifically section 137(a), which provides:[140]

> *the decision must not be inconsistent with Australia's obligations under the World Heritage Convention.*

[137] Ibid.
[138] Queensland Murray-Darling Committee, Submission No. 14.
[139] Environmental Defenders Office, Tabled document, Public hearing, Brisbane, 21 May 2014.
[140] Ibid.

In response, the department advised the Agreement was consistent with the EPBC Act and would ensure Australia's international obligations were met:[141]

> *Under the agreement, Queensland decision-makers must not make approval decisions that are inconsistent with certain EPBC Act plans or policies, Australia's obligations under relevant international treaties, and, for World Heritage, National Heritage and Ramsar Wetlands, the relevant management principles. This reflects sections 51 to 54 of the EPBC Act.*

In regards to consistency with ecological sustainable development principles, clause 6 of the agreement outlines the key requirements for making an approval decision, including that that approvals must be based on environmental policy:[142]

> *The parties agree that when deciding whether to approve an action in accordance with an Accredited Process and, if so, under what conditions, Queensland will ensure that the relevant decision maker will, subject to Law, have regard to the principles of environmental policy, as set out in section 3 of the Intergovernmental Agreement on the Environment 1992*.

The Intergovernmental Agreement on the Environment 1992, which is an agreement between the Commonwealth and state and territories, is based on the 'adoption of sound environmental practices and procedures, as a basis for ecologically sustainable development' and that this 'requires the effective integration of economic and environmental considerations in decision-making processes, in order to improve community well-being and to benefit future generations.'[143]

Committee comment

Proposed new section 54L of the SDPWO Act provides that the Coordinator-General must consider the bilateral agreement when deciding an application. The committee is satisfied the Draft Approval Bilateral Agreement safeguards the principles of environmental sustainable development on the basis that clause 6 (of the Agreement) explicitly states the decision maker will have regard to the principles of environmental policy as set out in section 3 of the Intergovernmental Agreement on the Environment 1992.

Concurrent bilateral and coordinated project processes

The Queensland Resources Council (QRC) suggested the Bill be amended to allow all 'matching processes' between the bilateral and coordinated project processes to be undertaken at the same time. QRC asserted that this would 'ensure a greater level of streamlining and enable a fuller integration between the bilateral processes (within Part 4A) and coordinated project processes (within Part 4).'[144]

The department advised the committee the provisions of proposed new Part 4A enable the processes to run concurrently.[145] For example, an application for a bilateral project declaration may be made at the same time as an application for a coordinated project declaration.[146] Similarly, proposed section 54(Q) in Part 4A requires a proponent must publicly notify the draft protected

[141] Department of State Development, Infrastructure and Planning, Correspondence dated 20 May 2014.
[142] Draft Approval Bilateral Agreement – Commonwealth of Australia and The State of Queensland, p 13.
[143] Intergovernmental Agreement on the Environment 1992, Section 3.2.
[144] Queensland Resources Council, Submission No. 25.
[145] Department of State Development, Infrastructure and Planning, Correspondence dated 20 May 2014.
[146] Proposed new section 54K. A bilateral project declaration refers to the Coordinator-General declaring a coordinated project to be also a project assess under the bilateral agreement: Section 54J.

matters report at the same time as publicly notifying the environmental impact statement (EIS) under existing Part 4.[147]

Committee comment

Whilst the committee is satisfied that in general, the proposed processes under new Part 4A can occur alongside existing processes under Part 4A, the committee seeks clarification that every stage of both processes could be conducted concurrently, in particular, the process for the Coordinator-General to seek further information from proponents and others during both the coordinated project process and bilateral project declaration process.

Point for clarification 7

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

Criteria for decision making

Proposed section 54W describes the matters the Coordinator-General must consider when making a decision on an approval or a condition, including:

- information about the project's potential impacts supplied by the proponent,
- submissions accepted for the project,
- decision making criteria in the approval bilateral agreement,
- protected matters report, and
- any further information requested of the proponent by the Coordinator-General under section 54S(2).

Proposed section 54W(3)(b) also enables the CG to consider any other matter considered relevant.

EDO Qld submitted that proposed section 54W(3)(b) confers 'huge discretion onto the CG to take any other matter into account if it is relevant in the opinion of the CG':[148]

> *The power given to the Coordinator General in this instance does not have sufficient limits attached and is therefore contrary to fundamental legislative principles in the LSA* [Legislative Standards Act 1992] *section 4(3)(a), which requires that where legislation makes the rights and liberties of individuals dependant on an administrative power, that power must be 'sufficiently defined'.*

The Queensland Law Society (QLS) was also concerned about the 'unnecessarily broad discretion of the Coordinator-General to take into account any other matter the CG considers relevant'. QLS agreed with EDO Qld that this would represent 'a broader discretion than the corresponding decision rules under the EPBC Act' and would be 'likely to create uncertainty.'[149]

EDO Qld recommended a provision equivalent to section 136(5) EPBC Act, which limits the criteria for decision making to only matters set out in the EPBC Act and provides the decision maker cannot

[147] Department of State Development, Infrastructure and Planning, Correspondence dated 20 May 2014.
[148] Environmental Defenders Office, Tabled document, Public hearing, 21 May 2014.
[149] Queensland Law Society, Submission No. 22.

take other matters into account in deciding a matter be inserted, into the Bill and proposed section 54W(3)(b) be removed.[150]

In response to this issue, the department advised it would re-visit the provision.[151] The committee supports revisiting this provision on the basis of the concerns raised.

Committee comment

The committee notes the concerns raised by EDO Qld and QLS regarding section 54W(3)(b) and the proposed discretionary power of the Coordinator-General. The committee supports a transparent and accountable process for the decision-maker in assessing and approving proposed actions, including certainty about what matters may be considered by the decision-maker.

The committee notes that proposed section 54W(4) provides that the Coordinator-General must prepare an assessment report that demonstrates the consideration of all matters in making the decision and a copy of the report must be provided to the proponent. However, the committee suggests the provision be re-considered in the context of the proposal for the Coordinator-General to consider and decide matters relating to national environmental significance and the issues raised by submitters.

Point for clarification 8

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

Consideration of environmental record in decision making

EDO Qld submitted that the Coordinator-General's discretion to consider a proponent's environmental record in proposed section 54W(3)(a) and also proposed to be included in a protected matters report is not strong enough in comparison to the requirements under the EPBC Act. EDO Qld suggested the consideration of the environmental record would:[152]

- be extremely limited and confined to legal proceedings and policies/planning,
- not be extended to executive officers, and
- not be extended to parent company or executive officers of a parent company.

EDO Qld submitted the definition of 'environmental record' be amended to reflect what is relevant under the EPBC Act provisions.[153]

[150] Environmental Defenders Office, Tabled document, Public hearing, 21 May 2014; Section 136(5) of the *Environmental Protection and Biodiversity Conservation Act 1999*.

[151] Public hearing transcript, p 31.

[152] Environmental Defenders Office, Tabled document, Public hearing, 21 May 2014.

[153] Section 136(4) of the EPBC Act provides in deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister may consider whether the person is a suitable to be granted an approval by having regard to a) the person's history in relation to environmental matters; and b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and c) if the person is a body corporate that is a subsidiary of another body or company (the parent body)—the history in relation to environmental matters of the parent body and its executive officers.

Committee comment

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

Point for clarification 9

The committee seeks advice from the Deputy Premier and Minister for State Development, Infrastructure and Planning in relation to the apparent inconsistency between the provisions of considering a proponent's environmental record proposed by the Bill and by the draft regulation and the provisions of the *Environmental Protection and Biodiversity Conservation Act 1999*.

Statutory timeframes

Several submitters commented on the lack of timeframes under proposed Part 4A of the Bill in relation to the assessment and approval of particular coordinated projects, timeframes for the approval or refusal of a bilateral project declaration, changes to approvals, the giving of notice of a decision, and the issuing of an environmental approval or the amendment of an approval. Submitters stated this was inconsistent with provisions contained in the EPBC Act which provides timeframes for the EIS and approval processes.[154]

Both QGC and QRC raised the issue that the proposed amendments do not provide an equivalent provision to section 131AA of the EPBC Act that requires the Minister to seek comment from a proponent (or person proposing to take an action, if different) regarding a proposed decision and any conditions to be imposed. Under the EPBC Act a person is invited to provide comments in writing within 10 business days. Both QGC and QRC recommended a similar provision be included in the Bill to allow a reasonable timeframe for comments to be provided.[155] The Queensland Law Society was also concerned about the inconsistency.[156]

The committee notes the concerns raised by submitters and would like to clarify why the proponent is not provided an opportunity to comment on the Coordinator-General's decision to approve the coordinated project or any conditions imposed.

In response to these issues the department advised:[157]

> *The proposed Part 4A amendments have been constructed to be consistent with the rest of the SDPWO Act that generally has no statutory timeframes. At this stage, it is not currently proposed to include further timeframes in the Bill.*

Committee comment

Given concerns raised by submitters about the inconsistency between the Bill and the EPBC Act regarding statutory timeframes, the committee seeks the advice of the Deputy Premier in relation to why there are no statutory timeframes imposed across the *State Development and Public Works Organisation Act 1971* and whether statutory timeframes will be considered in the future.

[154] Queensland Law Society, Submission No. 22; Queensland Resources Council, Submission No. 25; and QGC, Submission No. 35.

[155] Queensland Resources Council, Submission No. 25; QGC, Submission No. 35; *Environmental Protection and Biodiversity Conservation Act 1999*, section 131AA.

[156] Queensland Law Society, Submission No. 22.

[157] Department of State Development, Infrastructure and Planning, Correspondence dated 20 May 2014.

Point for clarification 10

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

Suspending and reinstating approvals

Proposed Division 5 of the Bill would allow cancellation of an environmental approval at a proponent's request or by the Coordinator-General on grounds including contravention or unforeseen significant impact.

The committee noted several requests from submitters that the Bill be amended to include the ability of the Coordinator-General to suspend or reinstate approvals, rather than cancellation, and to establish a process for any suspended or cancelled approvals to be reinstated. It was submitted that this would ensure consistency with section 145 of the EPBC Act.[158]

The department advised it would consider provision for the suspension and reinstatement of approvals in future amendments to the SDPWO Act:[159]

> *Proposed Division 5 in the Bill gives the Coordinator-General the power to cancel an environmental approval, however the Bill does not currently provide for approvals to be suspended, or reinstated once cancelled or suspended. Although these powers are anticipated to be rarely used, they may be potentially useful. The suggested additions may be considered for inclusion in future amendments to the SDPWO Act.*

Committee comment

The committee supports the department's consideration of this issue in future amendments to the SDPWO Act.

Compliance under the *Environmental Protection Act 1994*

Proposed new section 54ZL provides that section 493A of the *Environmental Protection Act 1994* (EPA) applies to the undertaking of a coordinated project as if an environmental approval for the project were an environmental authority under the EPA.

Section 493A of the EPA provides when certain actions that cause environmental harm are unlawful (e.g. an act that causes serious or material environmental harm or an environmental nuisance). The act is unlawful unless it has been authorised under the EPA (i.e. authorised by an environmental authority).

Proposed section 54ZL in Part 4A has been modelled on similar provisions under current Part 4 of the SDPWO Act with regard to causing environmental harm and executive officer liability to the undertaking of a coordinated project.[160]

[158] Queensland Law Society, Submission No. 22; Queensland Resources Council, Submission No. 25; QGC, Submission No. 35.
[159] Department of State Development, Infrastructure and Planning, Correspondence dated 20 May 2014.
[160] Explanatory Notes, p 60.

Queensland Resources Council sought clarification on:[161]

> [the] *compliance regime in the Bill seems to link to the EPA 1994 (section 54ZL), meaning an environmental approval issued by the CG is taken as if it were an environmental authority under the EPA.*

Proposed section 54ZL(4) provides the persons that may bring a proceeding under the compliance provision despite section 505 of the EPA.[162] EDO Qld submitted that this proposed section excludes third party standing for those acting in the public interest and that this would be contrary to the Standards for Accreditation. EDO Qld submitted that this provision should be modelled on section 505 of the EPA which includes third party standing.[163]

The department advised:

> *Division 6 of the Bill has been constructed to be similar to the equivalent Part 4 provisions for imposed conditions. These provisions take advantage of certain enforcement provisions of the* Environmental Protection Act 1994 *and the* Sustainable Planning Act 2009*.*

Committee comment

The committee is satisfied that the proposed provisions are modelled on the current provisions in Part 4, Division 8 of the SDPWO Act however, the committee seeks advice on the rationale for the apparent exclusion of those acting in the public interest from bringing a proceeding under the SDPWO Act.

Point for clarification 11

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

Recovering the cost of advice or services for assessment

Proposed section 54S(6) enables the Coordinator-General to ask any person for information, advice or comment about the final protected matters report or coordinated project. The Bill also enables the Coordinator-General to recover the cost of services provided for assessment from the proponent as outlined in proposed section 54ZO. According to the explanatory notes:[164]

> *In practice, this cost recovery is generally applied only where the Coordinator-General must contract external to government for the provision of advice or assistance not available with[in] government at that time, especially in relation to highly technical specialist matters.*

[161] Queensland Resources Council, Submission No. 25.

[162] Proposed section 54ZL(4) lists the Coordinator-General; an entity nominated under section 54V; the local government; the proponent; and another person whose interests are significantly adversely affected by the subject matter of the proceeding. Section 505 of the *Environmental Protection Act 1994* includes similar provisions to that of proposed section 54ZL(4) and the addition of persons given leave by the Court if the Court is satisfied of certain criteria – one of which includes that it is in the public interest the a proceeding be brought.

[163] Environmental Defenders Office, Tabled document, Public hearing, 21 May 2014.

[164] Explanatory Notes, p 61.

Both QRC and QGC recommended the Bill be amended to ensure that any costs incurred for external advice were 'reasonable'. Specifically, QGC recommended:[165]

> *The Bill be amended to establish a head of power for a regulation to prescribe the methods to work out what costs are reasonable, and properly recoverable, and a process for proponents to seek reconsideration of the determination of costs. The reconsideration process should include prescribed timeframes for a decision by the CG.*

Further, QGC sought clarification for a situation where the same advice may be relied upon by the Coordinator-General for multiple projects and how the costs would be divided among affected proponents.

In relation to this issue, the Queensland Law Society stated:[166]

> *As proponents will be paying they should at least be first provided with a quote and asked to comment on both the area of inquiry and the expected cost.*

In response, the department advised section 54ZO(2) is consistent with Part 4 of the SDPWO Act that enables the Coordinator-General to recover from a proponent the reasonable cost of obtaining the advice or services.[167]

Committee comment

The committee notes the provisions contained in the Bill are consistent with current provisions in Part 4 of the SDPWO Act. The committee requests the Deputy Premier clarifies, for the benefit of the House, the current process for selecting external consultants and how costs may be apportioned between proponents.

Point for clarification 12

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

Refusal to approve projects

EDO Qld submitted the Bill does not provide an equivalent provision to section 74B of the EPBC Act which would allow the Coordinator-General to reject clearly unacceptable projects on the basis 'that it is clear that the action would have unacceptable impacts on a matter protected' and recommended the Bill be amended to incorporate such a provision.

Although the Coordinator-General might be able to refuse to grant a 'bilateral project declaration' under proposed section 54L(4), EDO Qld considered there is insufficient criteria for determining whether there are clearly unacceptable impacts for a bilateral project declaration decision.[168]

In response the department advised:[169]

> *Under Chapter 3, Part 7 of the EPBC Act, a person proposing to take an action may refer the proposal to the Commonwealth Environment Minister. In response to the referral, the Commonwealth Environment Minister may make a decision, including a decision*

[165] Queensland Resources Council, Submission No. 25; QGC, Submission No. 35.
[166] Queensland Law Society, Submission No. 22.
[167] Department of State Development, Infrastructure and Planning, Correspondence dated 20 May 2014.
[168] Environmental Defenders Office, Tabled document, Public hearing, 21 May 2014.
[169] Department of State Development, Infrastructure and Planning, Correspondence dated 20 May 2014.

> *determining that the action is clearly unacceptable (s 74B). The Commonwealth Environment Minister must then give notice of the decision to the proponent, who may choose to withdraw the referral, withdraw the referral and make a new referral, or request the Minister to reconsider (s 74C).*
>
> *A bilateral agreement may declare that actions do not need approval under Chapter 3, Part 9 of the EPBC Act (s 46).* ***A bilateral agreement cannot cover the referral process as contained in Part 7 of the EPBC Act, and only the Commonwealth Environment Minister can make a decision under Part 7****.*[Emphasis added]

The department further advised:[170]

> *… the Coordinator-General is able to refuse to approve a project under the SDPWO Act.*

Committee comment

The committee is satisfied that the power to reject a project on clearly unacceptable impacts on protected matters rests with the Commonwealth Minister because the bilateral agreement cannot cover the referral process contained in Part 7 of the EPBC Act.

Review by courts

Standard 111 contained in the Standards document provides that the accredited process must include review rights by courts together with extended standing under State or Territory law at least equivalent to those existing for decisions under the EPBC Act.[171]

EDO Qld expressed concern that the Bill does not extend the standing of the meaning of a 'person aggrieved' under the *Judicial Review Act 1991* (Qld):[172]

> *This means that a person would need to establish they are a 'person aggrieved' under the* Judicial Review Act 1991 *(Qld), which is a much higher/onerous test than the extended standing granted under the EPBC Act s.487 (which can be generally described as the party bringing the action has a demonstrated interest in the environmental matter for the 2 years prior).*
>
> *This is contrary to Standard (111) of ensuring there is extended standing akin to that under the EPBC Act.*

Accordingly, EDO Qld recommended the extended standing provisions within section 487 of the EPBC Act be included in the Bill.

The department advised:[173]

> *The Standards for the Accreditation of Environmental Approvals under the EPBC Act provide that in order to be accredited, a State process must provide for decisions to be free from bias, transparent, consistent and subject to review by a court (standard 100). It also requires that there be rights of review by courts together with extended standing under State law at least equivalent to those existing for decisions under the EPBC Act (standard 111).*
>
> *As currently drafted, decisions under Part 4A would be subject to the* Judicial Review Act 1991 *(JR Act). It is the Department's view that the case law relating to standing under the JR Act means that, in practical terms, there is very little difference to the 'extended' standing*

[170] Ibid.
[171] Australian Government, Department of Environment, *Standards for Accreditation of Environmental Approvals under the Environmental Protection and Biodiversity Conservation Act 1999*, 2014, p 25.
[172] Environmental Defenders Office, Tabled document, Public hearing, 21 May 2014.
[173] Department of State Development, Infrastructure and Planning, Correspondence dated 20 May 2014.

provisions of the EPBC Act. Accordingly, no amendments have been proposed in relation to standing for judicial review.

Committee comment

The committee is satisfied with the department's response.

Provisions relating to false or misleading information

EDO Qld stated the existing provisions within the SDPWO Act included inferior provisions to outlaw the supply of false and misleading documents compared to the EPBC Act.[174]

The EPBC Act provides for an offence to provide information in response to a requirement or request under various parts which can be reckless or negligent.[175] EDO Qld recommended false and misleading provisions be included in the SDPWO Act equivalent to those in the EPBC Act.

The department acknowledged the 'false and misleading' provisions in the SDPWO Act are different to those in the EPBC Act and that proposed Part 4A amendments would not change the existing provisions within the SDPWO Act. However, the department advised that section 54ZG goes 'some way towards the EPBC Act provisions (in relation to the cancellation of an approval).[176] The department also advised no further amendments were required to the 'false and misleading' provisions in the SDPWO Act.[177]

Committee comment

The committee is satisfied with the department's response.

Publication of information

EDO Qld was concerned the Bill would provide inferior public access to information and fall below the standards for transparency in comparison to Commonwealth legislation:[178]

With no equivalent provisions to Part 7 EPBC Act regarding the referral mechanism, the public loses an existing opportunity to comment on a referral and whether the action needs assessment. Also, the documentation to the SDPWOA do not require similar documentation to be made available to the public regarding the referral as currently under the Cth system.

EDO Qld acknowledged clause 7 of the Draft Approval Bilateral Agreement included a requirement to publish information in relation to proposed actions on the Internet. However, EDO Qld recommended these provisions should be 'securely contained in the SDPWOA itself, not just the draft approval bilateral agreement.'[179]

The department advised the intent of clause 7 of the Agreement was to 'ensure that there is transparency in process and access to information, noting the specific considerations of Indigenous peoples and particular needs groups'.[180]

The department further advised the Agreement provides that Queensland must publish information relating to proposed actions, including approval decisions, assessment reports, and guidance material on the Internet and that under Schedule 4.[181]

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174 Environmental Defenders Office, Tabled document, Public hearing, 21 May 2014.

175 EPBC Act, sections 489(1) and 489(2A).

176 Section 54ZG - (4) An environmental approval may be cancelled in relation to a specified provision if- (a) information provided to the Coordinator-General during the assessment of the project did not accurately identify the likely impacts ...; (b) the information was inaccurate.

177 Department of State Development, Infrastructure and Planning, Correspondence dated 20 May 2014.

178 Environmental Defenders Office, Tabled document, Public hearing, 21 May 2014.

179 Ibid.

180 Department of State Development, Infrastructure and Planning, Correspondence dated 20 May 2014.

In relation to receiving public submissions on proposed actions, the department advised:

> *To ensure that matters of national environmental significance are considered in their national context, decision-makers must accept comments or submissions on proposed actions from anyone in Australia, if those comments or submissions are made in accordance with the requirements of the accredited process. Transparent assessment and decision-making processes are an important mechanism for ensuring that the objects of the agreement and the EPBC Act, and the ongoing responsibilities of the Commonwealth, continue to be met.*

Committee comment

Based on the advice from the department, the committee is satisfied the Bill provides sufficient public access to information. The committee notes, however, that proposed section 36B of the draft regulation to be made under the SDPWO Act only provides that the public notification be advertised in newspapers. Accordingly, the committee recommends section 36B of the draft regulation include provision to publicly notify on the Internet, in addition to newspapers.

Recommendation 9

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

[181] Ibid.

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' (FLPs) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

3.1 Rights, obligations and liberties of individuals dependent on administrative power

Clauses 9, 12, 36 and 41

Several clauses in the Bill provide for appeals in relation to infrastructure charges and applications for connections.

Clause 9 replaces existing section 478 of the *Sustainable Planning Act 2009* with new sections 478 and 478A which provide that the recipient of an infrastructure charges notice can appeal to the Planning and Environment Court in relation to the decision in the notice. Similarly, clause 12 provides for a new section 535 of the *Sustainable Planning Act 2009* allowing the recipient of an infrastructure charges notice to appeal to the building and development committee about the decision in the notice.

Both clauses 9 and 12 at subsection (3) provide that the scope of the appeal must not be in relation to the value of the infrastructure charge adopted by a local government in its resolution. The explanatory notes stated:[182]

> *For a decision about an offset or refund, the appeal cannot be about the establishment cost of infrastructure in a LGIP or the value of the infrastructure determined using the method in a local government's charges resolution.*

Clause 36 amends section 99BRBF of the SEQ Water Act to provide for internal review of a charge decision or a decision to give an infrastructure charges notice. An applicant may appeal to the building and development committee about the review decision.

Clause 41 amends section 99BRBO of the SEQ Water Act to provide that the section applies if an applicant for a connection applied for internal review of a charge decision or a decision to give an infrastructure charges notice and the review decision is not the decision sought by the applicant. The applicant may appeal to a Planning and Environment Court about the review decision.

However, subsection (4) of both clauses provides that an appeal must not be about the value of the infrastructure charge adopted by a distributor-retailer as they have the ability to adopt infrastructure charges at amounts below their agreed proportion.

Subsection (4) also provides that for a decision about an offset or refund for an infrastructure charges notice an appeal must not be about the establishment cost for infrastructure identified in the distributor-retailer's water Netserv plan or decided using the method included in the distributor-retailers water Netserv Plan or infrastructure charges schedule.

Potential FLP issue

Pursuant to section 4(3)(a) of the *Legislative Standards Act 1992*, legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review.

[182] Explanatory Notes, p 16.

Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process.[183]

If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review. The Scrutiny of Legislation Committee (SLC) took particular care to ensure the principle that there should be a review or appeal against the exercise of administrative power is adhered to and the committee is generally opposed to clauses removing the right of review.[184]

In this instance, the aforementioned clauses provide a right of appeal; however the scope of the appeal is restricted. The explanatory notes are silent on the rationale for these restrictions.

Departmental response

The department advised:[185]

> *The reason for this restriction is that the Government, through the State Planning Regulatory Provision (SPRP) for adopted charges, already limits the charges that a local government can set. The limit on charges is intended to prevent the levying of charges which are unreasonable and adversely impact on an applicant. As charges set cannot exceed the limits imposed by the State, it is not necessary to provide new rights of appeal in relation to charges set by resolution.*
>
> *Additionally, the SPA currently requires that an SPRP be subject to a minimum of 30 days public consultation. As such, stakeholders have the opportunity to make comment on what they consider to be an appropriate charge amount during that consultation period.*

Committee comment

The committee made comment on the Bill's appeal provisions in Part 2 of this report. The committee is satisfied the appeal provisions are restricted to the matters listed and that the inability to appeal an infrastructure charge set by a local authority remains.

3.2 Is the Bill consistent with principles of natural justice?

Clauses 18 and 45

Summary of provisions

Clause 18 amends sections 633 and 657 of the SPA. Section 633 provides that a charges resolution must include a method for working out the cost of infrastructure subject to an offset or refund. This is used when an applicant makes a request under section 657 to determine the value of the establishment cost of an offset or refund which may be outdated or incorrect.

Similarly, clause 45 amends sections 99BRCH and 99BRDC of the SEQ Water Act which carries out the same functions as sections 633 and 657 of the SPA.

Potential FLP issues

The explanatory notes advise there are no appeal rights to the determination of the infrastructure value in accordance with the process established under sections 633 and 657 of the SPA and 99BRCH and 99BRDC of the SEQ Water Act. There is also no appeal right for planned values outlined in a Local Government Infrastructure Program (LGIP) or distributor-retailer Water Netserv Plan.

[183] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 18.
[184] Ibid.
[185] Department of State Development, Infrastructure and Planning, Correspondence dated 22 May 2014.

Legislation should be consistent with the principles of natural justice which are developed by the common law and incorporate the following three principles:[186]

1. Something should not be done to a person that will deprive them of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker.
2. The decision maker must be unbiased.
3. Procedural fairness should be afforded to the person, meaning fair procedures that are appropriate and adapted to the circumstances of the particular case.

In this instance, there is no appeal process contained in the amended clauses discussed above. This has the potential to adversely affect members of the public who may have legitimate reasons to challenge a decision.

The explanatory notes advised:[187]

> *LGIP's and water Netserv plans are required to undergo a robust review process prior to being adopted, including public consultation on the value of infrastructure. The public have an opportunity to challenge the accuracy of the values in a LGIP or water Netserv plan at this stage. Additionally, the methodology process mentioned in 657 (for SPA) and section 99BRDC (for the SEQ Water Act) provides an additional avenue to test the accuracy of the value of infrastructure in a LGIP. As the methodology process itself is a testing of the original value it would be inefficient to then provide for an appeal to test this value again.*

Departmental response

In addition to the commentary provided in the explanatory notes above, the department advised the committee of the review process for LGIPs and Netserv Plans:[188]

> *The review of an infrastructure plan is required every five years at a minimum. The review process includes a minimum of 45 days of public consultation and the local government to consider and reply to all submissions made. The local government must then detail, to the Planning Minister, how they have responded to the submissions. Additionally, the Planning Minister can impose conditions on the drafting of an infrastructure plan. The drafting of a Netserv Plan has a similar review process including oversight by the Planning Minister and the local government.*

Committee comment

The committee is satisfied the review process relating to draft infrastructure values included in LGIPs and Netserv Plans are transparent and subject to public consultation and additional oversight by the Planning Minister prior to being adopted.

3.3 Delegation of administrative power to appropriately qualified officers

Clause 13

Summary of provisions

Clause 13, section 554B provides for new section 554B – *Power to suspend committee proceeding to form another committee*. Pursuant to this clause the chief executive can suspend a proceeding and

[186] Ibid, p 25.
[187] Explanatory Notes, p 10.
[188] Department of State Development, Infrastructure and Planning, Correspondence dated 22 May 2014.

establish another committee to hear and decide the proceeding if the chief executive believes the committee established to hear the matter does not have the expertise to decide the matter.

Potential FLP issues

Clause 13 gives the chief executive significant discretionary powers to remove a committee and establish a new one.

Powers should only be delegated to appropriately qualified officers or employees. The OQPC Notebook provides that the appropriateness of a limitation on delegation depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.[189]

The explanatory notes advised in relation to new section 554B:[190]

> *This new section provides the chief executive with the necessary flexibility to ensure that appropriately qualified referees can hear the real issues in the proceeding. Subsection (2) clarifies that subsection (1) does not limit the chief executive's ability to decide to end the proceeding under section 554C(1)(b).*

Departmental response

The department advised:[191]

> *When a committee is formed, every effort is taken by the chief executive to choose a suitable committee, comprising of between one and five referees drawn from a pool of appointed referees with appropriate qualifications and experience to hear the matter.*
>
> *... in certain limited circumstances, it can become evident after a committee has been formed that it does not have the appropriate qualifications and experience to hear the issues in dispute... unless its membership is modified. Currently under the SPA ,... the committee has no ability to change its membership (except under section 504(2) if the chairperson is incapacitated), and therefore risks deciding the appeal without the necessary qualifications and experience... and may result in an appeal of the decision to the Planning and Environment Court.*
>
> *A similar situation to that identified above recently arose in an appeal from a committee to the Planning and Environment Court (*Parker & Anor v Professional Certification Group Pty Ltd & Anor [2014] QPEC 009*).*

Committee comment

The committee is satisfied the chief executive is the most appropriate officer to be delegated the power to remove a committee and establish a new one. The chief executive initially appoints the committee and so it is considered the chief executive should be afforded the power to change its membership. The committee notes this is particularly important for a situation that may arise whereby members do not have the appropriate qualifications or experience to hear the matter.

[189] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 33.
[190] Explanatory Notes, p 17.
[191] Department of State Development, Infrastructure and Planning, Correspondence dated 22 May 2014.

3.4 Rights and liberties and retrospective imposition of obligations

Clauses 19 and 48

Summary of provisions

Clause 19, section 990(2) and clause 48, section 141(2) allow for a transitional regulation to have retrospective operation to a day not earlier than the day of commencement.

Potential FLP issues

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

The explanatory notes stated that the Bill does not contain provisions with direct retrospective affect, and that the transitional provisions are designed to accomplish the following:[192]

> *Support the continuation of infrastructure charges resolutions (to the extent they are consistent with the State planning regulatory provision) in place before the commencement of the amending legislation; and ensure that infrastructure charges notices, infrastructure conditions and infrastructure agreements lawfully existing prior to the commencement of the amending legislation continue to be lawful.*

Committee comment

The committee considers that, given the transitional provisions are to support the particular circumstances in place before the commencement of the amending legislation as outlined in the explanatory notes, and the absence of any evidence to suggest the provisions may adversely affect the rights and liberties of individuals, the provisions are justified.[193]

3.5 Delegation of administrative power and scrutiny by the Assembly

A Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.[194]

Clause 18 (section 629(2))

Clause 18, section 630(1) provides that a local government may, by resolution, adopt charges (each an adopted charge) for providing trunk infrastructure for development.

Section 629(2) provides that the Minister may change the amount of a maximum adopted charge by gazette notice. Section 629(3) provides for a specific methodology in calculating the amount of an adopted charge pursuant to section 629(2).

Appropriate delegation of legislation

It is not uncommon for Acts to provide that fees or amounts to be used when calculating payments be prescribed by regulation. However, a gazette notice is not subordinate legislation and therefore not subject to disallowance.

The OQPC Notebook states 'for Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of

[192] Explanatory Notes, p 10.

[193] Queensland Environmental Law Association briefly commented on this issue in its submission to the inquiry, see Submission No. 29.

[194] Ibid.

the power, raises obvious issues about the safe and satisfactory nature of the delegation'.[195] The matter involves consideration of whether the delegate may only make rules that are subordinate legislation, and thus subject to disallowance.

> *The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when the power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny*.[196]

The SLC commented adversely on provisions allowing matters, which might reasonably be dealt with by regulation, to be processed through some alternative means that does not constitute subordinate legislation and therefore is not subject to parliamentary scrutiny. In considering the appropriateness of delegated matters being dealt with through an alternative process, the SLC considered:

- the importance of the subject dealt with,
- the practicality or otherwise of including those matters entirely in subordinate legislation,
- the commercial or technical nature of the subject matter, and
- whether the provisions were mandatory rules or merely to be had regard to.[197]

The SLC also considered that despite an instrument not being subordinate legislation, if there is a provision requiring tabling and providing for disallowance, there is less concern raised.[198]

The SLC also determined if a document that is not subordinate legislation is intended to be incorporated into subordinate legislation, then an express provision should require the tabling of the document at the same time as the subordinate legislation.[199] Similar considerations apply when a non-legislative document is required to be approved by an instrument of subordinate legislation.[200]

Departmental response

The department advised:[201]

> *Clause 18 has regard to the rights and liberties of consumers as this clause stipulates a clear methodology for the Minister to index the maximum adopted charges, and establishes limitations on the amount by which a maximum adopted charge may be indexed.*
>
> *Indexation is limited to the maximum adopted charge at the start of the financial year, multiplied by the 3 year moving average of the producer price index for Queensland road and bridge construction – available from the Australia Bureau of Statistics. Indexation of the maximum adopted charges can commence following Gazettal by the Minister. Therefore indexation of the maximum adopted charges cannot be applied retrospectively.*

Committee comment

The committee considers that certainty and transparency is provided by the proposed section 629(3) which outlines the specific methodology to be applied in determining an increase. The committee considers this provides enough restriction on the Minister's ability to increase a charge by gazette

[195] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 154.
[196] Ibid, p 155.
[197] Ibid.
[198] Scrutiny of Legislation Committee, Alert Digest 2004/3, pp 5-6, paras 30-40; Alert Digest 2000/9, pp 24-25, paras 47-56.
[199] Alert Digest 2001/8, p 16, para. 7; Alert Digest 1996/5., p 9, para 3.8.
[200] Alert Digest 2003/11, p 23, paras 33-40.
[201] Department of State Development, Infrastructure and Planning, Correspondence dated 22 May 2014.

notice. The committee expects that any significant change to the maximum charge would be subject to extensive consultation.

However, the committee raises the issue of whether allowing for the Minister to change an adopted charge by gazette notice rather than through subordinate legislation has sufficient regard to the institution of Parliament and the legislative scrutiny process for the House to determine.

3.6 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

The committee considers it would be helpful if the explanatory notes identified the specific clause(s) being discussed, when identifying the fundamental legislative principles.

Appendices

Appendix A – List of submitters

Sub #	Name
001	Lombards Property Developments
002	RPS
003	Cairns Regional Council
004	Cement Concrete & Aggregates Australia
005	Ipswich City Council
006	Noosa Council
007	Sunshine Coast Council
008	Sippy Downs & District Community Association Inc
009	Property Council of Australia and Shopping Centre Council of Australia
010	Cassowary Coast Regional Council
011	Toowoomba Regional Council
012	Victoria G Feros Town Planning Consultants on behalf of W Bowden
013	Large Format Retail Association
014	Queensland Murray-Darling Committee
015	Bligh Tanner
016	Logan City Council
017	City of Gold Coast
018	Far North Queensland Regional Organisation of Councils
019	Housing Industry Association Limited
020	Local Government Association of Queensland
021	Queensland Tourism Industry Council
022	Queensland Law Society
023	Mackay Regional Council
024	Council of Mayors South East Queensland
025	Queensland Resources Council
026	Somervilles Town Planners Surveyors & Project Managers
027	Urban Development Institute of Australia
028	Moreton Bay Regional Council
029	Queensland Environmental Law Association Inc.
030	Brisbane City Council
031	City of Townsville
032	Master Builders
033	Maranoa Regional Council
034	Rockhampton Regional Council
035	QGC
036	Environmental Defenders Office - Queensland
037	Planning Institute Australia
038	Unitywater

Appendix B – List of witnesses at the public hearing held 21 May 2014

Witnesses
William H Bowden, Managing Director - WH Bowden GP of Companies
Greg Hoffman, General Manager Advocacy - Local Government Association Queensland
Luke Hannan, Manager Advocacy Planning Development & Natural Environment - Local Government Association Queensland
Christopher Mountford, Deputy Executive Director - Property Council of Australia
Duncan Maclaine, Director Policy and Economic Research - Urban Development Institute of Australia (Queensland)
Jo-Anne Bragg, Principal Solicitor - Environmental Defenders Office (Qld) Inc
Rana Koroglu, Solicitor - Environmental Defenders Office (Qld) Inc
Leanne Bowie, Chair of the QLS Planning and Environment Law Committee
Matt Dunn, Principal Policy Solicitor - Queensland Law Society
James Coutts, Executive Director of Planning - Department of State Development, Infrastructure and Planning
Natalie Wilde, General Manager Government land and Asset Management - Department of State Development, Infrastructure and Planning
Gayle Leaver, General Manager Water Supply Policy and Economics - Department of Energy and Water Supply
Michael Allen, Executive Director Office of the Coordinator General - Department of State Development, Infrastructure and Planning
Sally Noonan, Executive Director Futures - Department of State Development, Infrastructure and Planning
Dean Misso, Director Planning Group - Department of State Development, Infrastructure and Planning

Statement of Reservation

HON. TIM MULHERIN MP
DEPUTY LEADER OF THE OPPOSITION
SHADOW MINISTER FOR STATE DEVELOPMENT, INFRASTRUCTURE AND PLANNING
SHADOW MINISTER FOR AGRICULTURE, FISHERIES AND FORESTRY
SHADOW MINISTER FOR LOCAL GOVERNMENT AND RACING
MEMBER FOR MACKAY
PO Box 15057, City East QLD 4002
reception@opposition.qld.gov.au (07) 3838 6767

Mr Bruce Young MP
Chair of the State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000

Email: sdiic@parliament.qld.gov.au

Dear Chair

I write to lodge a statement of reservations on the State Development, Infrastructure and Industry Committee's report on the *Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014*.

Firstly, I wish to express my concern about the limited time period for consideration of the said legislation by this committee. The bill was introduced into the Queensland Parliament on 8 May 2014 with a three week time frame for the Committee to consider the bill and report back to the Parliament. This short time frame attenuated the detail of some submissions to the Committee and dissuaded other potential submissions.

I also note my concern that the bill is in fact two bills artificially combined into one. The *Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014* seeks to substantially amend the Sustainable Planning Act 2009 and the State Development, Public Works and Organisation Act 1971 for different purposes. The respective separate purposes merited separate inquiries into their merits and detail.

I now turn to the reservations I have with the contents of the bill.

Infrastructure planning and charges reforms

The submissions by stakeholders including local governments and property development peak bodies were generally approving of the bill. Each stakeholder had their own concerns about aspects of the bill and some concerns deserve further discussion.

The Opposition will be providing further detail on the valid concerns and other matters during the second reading debate.

Environmental approvals bilateral agreement

Queensland Labor strongly opposes the Abbott Government's decision to hand over all environmental approval powers in Queensland to the Newman Government. Sadly the Newman Government has proved it cannot be trusted to protect our natural environment.

Queensland Labor believes the Federal Government should not abrogate its responsibilities to maintain the highest environmental standards for matters of national and international significance.

The Environmental Defenders Office and Queensland Law Society set out a number of concerns with the legislation as compared to the federal *Environment Protection and Biodiversily Conservation Act 1999*. Queensland Labor shares those concerns.

It is inappropriate for the Co-ordinator General to be handed powers that are currently exercised by the Federal Environment Minister. The Coordinator General is tasked with promoting economic development within Queensland, a goal which is sometimes in conflict with proper environmental protection.

It is also of concern to the Opposition that the bill does not have the same standards of transparency as the existing federal legislation and effectively reduces the ability of individuals and community groups to access the justice system to challenge approvals.

The fact that the Coordinator General will not have the power to reject unacceptable proposals is a further deficiency of the bill. While the Department of State Development, Infrastructure and Planning responded by pointing out that proponents may refer a proposal to the Federal Minister who will still be able to exercise this power, there is no reason to believe proponents would do so when they could access the state approvals process.

The Opposition concurs with the Law Society's reservations concerning the lack of time limits within the legislation compared to the EPBC Act which delineates time frames for the environmental impact statement and approval process.

Queensland Labor harbours significant reservations with the consultation process carried out by the Newman Government. This legislation will most likely be debated in parliament before the consultation process has even finished. This is an unacceptable method of public engagement.

Further it is worrying that key conservation groups were left out of the consultation process and not given the opportunity to comment on the exposure draft of this legislation.

The Opposition will be providing further detail on these and other matters during the second reading debate.

Yours sincerely

Tim Mulherin MP
Deputy Leader of the Opposition

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