Parliamentary Committees

Local Government and Other Legislation Amendment Bill (No. 2) 2015

Report No. 10, 55th Parliament
Infrastructure, Planning and Natural Resources Committee
November 2015

Infrastructure, Planning and Natural Resources 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 Infrastructure, Local Government and Planning and the Department of Energy and Water Supply.

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Chair's foreword

This report presents a summary of the Infrastructure, Planning and Natural Resources Committee's examination of the Local Government and Other Legislation Amendment Bill (No. 2) 2015.

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, 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.

I would also like to thank the departmental officials who briefed the committee; the committee's secretariat; and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.

Jim Pearce MP
Chair

November 2015

Acronyms

CCGC	Council of the City of Gold Coast
COBA	*City of Brisbane Act 2010*
FLP	fundamental legislative principle
FPTP	first-past-the-post
ICN	Infrastructure charges notice
LGA	*Local Government Act 2009*
LGAQ	Local Government Association of Queensland
LGEA	*Local Government Electoral Act 2011*
LGIP	local government infrastructure plan
LSA	*Legislative Standards Act 1992*
OPV	optional-preferential voting
PCA	Property Council of Australia
PIP	priority infrastructure plans
QCA	Queensland Competition Authority
QUU	Queensland Urban Utilities
SCCA	Shopping Centre Council of Australia
SEQ Water Act	*South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*
SPA	*Sustainable Planning Act 2009*

Recommendations

The committee recommends the Local Government and Other Legislation Amendment Bill (No. 2) 2015 be passed.

The committee requests the Deputy Premier advise the House how and when the department would clarify to local governments that no further extensions would be considered after the proposed deadline of 1 July 2018.

The committee requests the Deputy Premier advise the House about what may happen if a local government was unable to achieve the steps outlined in their project plan submitted as part of their application for extension, in particular:

(a) any monitoring the department would conduct in relation to a local government achieving the steps outlined in their project plan

(b) how the department would assist a local government in achieving the timeframes as set out in the project plan

(c) if there would be any consequences for local governments if they were unable to meet the requirements of their project plan, excluding not meeting the extension deadline and not being able to levy charges.

1 Introduction

1.1 Role of the committee

The Infrastructure, Planning and Natural Resources Committee (the committee) was established by the Legislative Assembly on 27 March 2015 and consists of government and non-government members.

The committee's areas of portfolio responsibility are:[1]

- Transport, Infrastructure, Local Government, Planning and Trade, and
- State Development, Natural Resources and Mines.

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 17 September 2015, the Local Government and Other Legislation Amendment Bill (No. 2) 2015 was referred to the committee for examination and report. The Legislative Assembly fixed the committee's reporting date of 2 November 2015.

1.3 The committee's inquiry process

On 23 September 2015, the committee called for written submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of stakeholders. Due to the committee's short reporting timeframe, the closing date for submissions was 2 October 2015. The committee received 6 submissions (see Appendix A).

On 1 October 2015, the committee held a public briefing with the Department of Infrastructure, Local Government and Planning (see Appendix B). The committee determined not to conduct a public hearing due to the limited stakeholder interest.

Copies of the submissions and transcripts of the public briefing and public hearings are available from the committee's webpage.[2]

1.4 Policy objectives of the Bill

The policy objectives of the Bill are to:

- correct an inconsistency between the *Local Government Electoral Act 2011* (LGEA) and the *City of Brisbane Act 2010*/*Local Government Act 2009* relating to making an accepted how-to-vote cards available for inspection at the local government's public office during the caretaker period for a local government election
- remove an obsolete reference to mayoral first-past-the-post voting in the LGEA
- enable local governments to seek an extension of up to two years to have a Local Government Infrastructure Plan (LGIP) in place

[1] Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 17 July 2015).

[2] See www.parliament.qld.gov.au/ipnrc.

- enable an applicant to advise a local government that they are not seeking information about an offset or refund in an Infrastructure Charges Notice (ICN)
- enable an applicant for a connection approval to advise a distributor-retailer that the applicant is not seeking information about an offset or refund in an ICN.

1.5 The Government's consultation on the Bill

The explanatory notes state that a draft exposure Bill incorporating the proposed amendments to the COBA, LGA and LGEA was released for targeted consultation with the Local Government Association of Queensland (LGAQ), the Local Government Managers Australia (Queensland) and the Electoral Commission of Queensland in August 2015.

The explanatory notes further state that the proposed amendments to the SPA to extend the timeframe to adopt a LGIP and the ability for development applicants to advise local governments they were not seeking information about an offset or a refund in the ICN was supported by the LGAQ and the Infrastructure Charges Working Group.[3]

1.6 Should the Bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether to recommend the Bill be passed. The committee recommends the Bill be passed.

Recommendation 1

The committee recommends the Local Government and Other Legislation Amendment Bill (No. 2) 2015 be passed.

[3] Explanatory notes, p 4.

2 Examination of the Bill

2.1 Amendments to the *Sustainable Planning Act 2009* and the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*

Local Government Infrastructure Plans

One of the objectives of the Bill is to amend the *Sustainable Planning Act 2009* (SPA) to extend the existing timeframe for a local government to prepare a local government infrastructure plan (LGIP) beyond the current cut-off date of 30 June 2016.[4] Currently, the SPA provides that a local government would be unable to levy infrastructure charges after 30 June 2016 if they do not have a LGIP in place.[5]

Clauses 12 to 18 of the Bill would allow a local government to finalise its LGIP up to the proposed extension cut-off date of 1 July 2018 on application to the Planning Minister while continuing to levy charges and/or set conditions relating to the provision of trunk infrastructure.[6] Local governments would be required to submit an application accompanied by supporting information that demonstrated their ability to meet the extended timeframe to the Planning Minister. The supporting information, the 'project plan', would include an outline of how the local government intended to prepare the required infrastructure plan, the timeframe for completion, and the resources required. The department advised that applications for extensions would be 'considered by the planning minister on a case-by-case basis.'[7]

The committee was advised that the proposed amendment is necessary as many local governments had advised the department that they would not be able to finalise the preparation of their LGIPs by the current 30 June 2016 cut-off date.[8] The department advised that extending the cut-off date would also allow local governments enough time to prepare considered LGIPs:

> … the feedback that we have had is that many of those which did expect to have a plan in place were concerned that they had rushed the process and that they would probably have to go back and revise it anyway. So they are appreciative that they may have some extra time to do a better job than what the outcome will be if it remains at 30 June 2016.[9]

The department advised that the proposed amendments would not have an impact on the local governments that were in a position to have a LGIP in place by 30 June 2016.[10] The department also

[4] A local government infrastructure plan is 'that part of a planning scheme that identifies the local government's plans for trunk infrastructure that are necessary to service urban development at the desired standard of service in a coordinated, efficient and financially sustainable manner.' Department of Infrastructure, Local Government and Planning, Local government infrastructure plans; Public briefing transcript, 1 October 2015, Brisbane, p 2.

[5] Under the SPA, local governments are able to levy infrastructure charges when approving development in order to recover some of the costs of delivering infrastructure. Public briefing transcript, 1 October 2015, Brisbane, p 2.

[6] Public briefing transcript, Brisbane, 1 October 2015, p 2.

[7] Ibid.

[8] Ibid.

[9] Ibid, p 5.

[10] Ibid, p 2.

advised that not all local governments intended to levy infrastructure charges and were therefore not required to prepare a LGIP; only 38 out of the 77 councils would have a LGIP.[11]

Issues raised by submitters

Cost and resources required

The committee received two submissions from local governments, Southern Downs Regional Council and Gold Coast City Council, both of which expressed support for the proposed amendment to extend the cut-off date for the preparation of LGIPs to 30 June 2018. The Local Government Association of Queensland (LGAQ) also expressed support for proposed amendment.[12]

The Southern Downs Regional Council submitted that the extension would assist with meeting the financial cost of preparing a LGIP:[13]

> Like many small regional local governments, Southern Downs Regional council does not have the in-house expertise required to prepare a LGIP and will be relying on consultants to undertake this work. Council does not have the financial capacity to meet the considerable costs involved in preparing the LGIP by 30 June 2016, and having a longer timeframe over which to meet these costs will be beneficial.

In response to concerns that local governments may not have the financial or resource capacity to prepare LGIPs, the department advised that it could provide resources to assist councils in the preparation of the plans:

> When the councils start putting in their project plans to the minister, when they request an extension, then we will look at allocating resources to those councils that are most in need of assistance.[14]

The department also advised that it had a team to assist stakeholders, including local governments, consultants, the LGAQ and distributor-retailers, regarding the preparation of LGIPs.[15]

The department also clarified that resources in relation to funding was a possibility but would be subject to a further policy decision.[16]

Committee comment

The committee is satisfied that the department is providing appropriate assistance to local governments for the preparation of LGIPs.

Use of existing priority infrastructure plans (PIPs)

LGAQ expressed a view regarding the introduction of LGIPs and recommended that:

- a more reasonable approach would be to allow local governments to continue using their existing priority infrastructure plans (PIPs)
- the State Government work with each local government to determine an individualised transitional timeframe for preparing an LGIP that reflects each council's unique situation.

[11] Ibid, pp 2 and 10.
[12] Local Government Association of Queensland, submission 2.
[13] Southern Downs Regional Council, submission 1.
[14] Public briefing transcript, Brisbane, 1 October 2015, p 5.
[15] Ibid, p 8.
[16] Ibid.

LGAQ submitted:

> The requirement introduced by the former State Government in 2014 for all local governments to have an approved LGIP by 1 July 2016 was considered unreasonable and unlikely to be achieved by most local governments. The arbitrary 1 July 2016 timeframe was understood to be the 'stick' to encourage councils to formally amend their priority infrastructure plans (PIPs) to LGIPs, however the timeframe does not consider the context in which councils have already developed their PIPs. Many councils have already undergone multiple State Interest reviews of their existing PIPs, including reviews by the Queensland Competition Authority. To require local governments to 'jump through additional hoops' is particularly wasteful considering councils must also review their LGIPs within a statutory 5-year timeframe. The LGAQ maintains a reasonable approach would allow councils to continue having regard to their existing PIPs as LGIPs and for the State Government to support those councils without existing PIPs / LGIPs.
>
> The LGAQ recommends the State Government work with each local government to agree to a transitional timeframe (having regard to the 5 year mandatory LGIP review timeframe) that reflects each councils' unique circumstances, including planning scheme drafting status and financial considerations.[17]

The department noted that the LGAQ's view did not reflect the policy decision reached by the State Government during its 2013–14 review of the infrastructure planning and charges framework. The decision aimed to 'balance the often conflicting interests of different stakeholders including local government and the development industry.'[18]

In response to the LGAQ's suggestion that PIPs continue to be utilised, the department advised:

> The new infrastructure planning and charges framework was drafted to support certainty, transparency, equity and consistency of approach. The LGIP is an important document to facilitate achievement of these outcomes and it provides the basis for local governments to impose conditions about trunk infrastructure when dealing with applications for development. It provides information in a pro-active and transparent way which in turn provides certainty to the community and developers.
>
> Existing PIPs were prepared under outdated guidelines and do not match the perspective set under the new framework. Because of elapsed time, much of the work previously done to prepare PIPs is now outdated. LGAQ refers to PIP reviews conducted by the Queensland Competition Authority (QCA), but it is worth noting that this is an old requirement that applied under the *Integrated Planning Act 1997* and was superseded with the introduction of SPA. The QCA reviews were conducted in 2008-2009 which means the information is now outdated and relevant PIPs should have been updated after five years (legislative requirement).[19]

The department also responded to the LGAQ's recommendation that a transitional process be implemented for each local government:

> In conjunction with the time elapsed since the introduction of the LGIP requirements in July 2014, the proposed extension provides more than sufficient time to enable all local governments to develop and adopt their respective LGIPs.
>
> Maintaining an adequate, reasonable and consistent deadline across Queensland will require all local governments to commit and allocate the necessary resources to prepare and finalise their LGIPs. It would also provide greater certainty and clarity to the community and development industry.[20]

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17 Local Government Association of Queensland, submission 2.

18 Department of Infrastructure, Local Government and Planning, correspondence dated 12 October 2015, p 4.

19 Ibid, pp 4-5.

20 Ibid, pp 6-7.

Committee comment

While the committee appreciates the view of the LGAQ that PIPs continue to be used, particularly given the financial and resource implications for local governments in preparing LGIPs, the committee supports the policy position that PIPs do not match the requirements as set under the new infrastructure planning and charges framework and, therefore, cannot continue. The committee also notes the department's comments that the information in the PIPs was now outdated.

Finally, in regard to the proposed implementation of a transitional process, the committee supports the department's view that consistency in deadlines for all relevant local governments to complete their LGIPs is important in creating greater certainty to the community and development industry.

Guideline for extension application

Council of the City of Gold Coast (CCGC) submitted that the current date of 1 July 2016 was considered 'unreasonable and unlikely to be achieved by most local governments' and welcomed the proposed amendment. However, its key concern related to section 997(3)(b), which requires an application for an extension to include a project plan and an outline of how the local government would finalise its LGIP within the extended timeframe. CCGC stated:

> While such information, at a broad level is reasonable, it will be important for the level of detail required to not be onerous or unreasonable. It is understood the Department of Infrastructure, Local Government and Planning has been instructed to prepare a guideline detailing the level of information local government is required to submit in support of their application.[21]

In this regard, CCGC sought a copy of the guideline as soon as possible 'to understand the requirements for preparation of an application.'[22]

The department advised that the guideline would be provided to local governments should the amendments pass:

> The planning Minister can only approve applications for an extension of time after commencement of the proposed amendments (expected to commence in December 2015 if passed). In the interim DILGP is preparing supporting material to provide guidance to local governments on how to prepare submissions in accordance with the proposed amendments. It is expected that this supporting material will be forwarded to local governments over the coming weeks following the commencement of these amendments.[23]

Committee comment

The committee supports the view of CCGC that a guideline should be provided to local governments to ensure the application for extension process is not onerous and that local governments include all relevant supporting information. The committee is satisfied with the department's response that this guideline would be provided to local governments should the amendments be passed.

Given the short timeframe between the potential commencement of these amendments (December 2015) and local government elections in March 2016, the committee is also satisfied with the department's response that the guideline would be provided as quickly as possible.

[21] Council of the City of Gold Coast, submission 5.

[22] Ibid.

[23] Department of Infrastructure, Local Government and Planning, correspondence dated 12 October 2015, p 8.

Timeframe for Minister's decision on extension request

Under the Bill, section 997(5) of SPA would require the Minister to make a decision on an extension within 20 business days or the extension until 30 June 2018 is deemed to be granted. GCCC expressed support for this timeframe:

> This is considered an important and appropriate inclusion, providing greater certainty to local government, given an extension remains at the discretion of the Minister.[24]

However, the Property Council of Australia (PCA) was concerned that the timeframe was too short and recommended the Minister have a minimum of 60 days to make the decision before the extension to 30 June 2018 was granted:

> We are also concerned that a local government will be granted an extension of two years if the Minister does not inform the local government of the decision within 20 business days after receiving the application. This is a short period of time given that the department will need to review the information provided by the local government prior to the Minister making a decision.
>
> Therefore the Property Council recommends a minimum of 60 business days …[25]

The department advised that it considered the proposed 20 business day timeframe sufficient for the Minister to make a decision, and necessary given that local government elections were scheduled for March 2016 and that no decisions could be made by councils during a caretaker period:

> It is expected that the proposed amendments will commence no earlier than December 2015 which leaves six months to the current deadline of 1 July 2016. It is considered appropriate and necessary to respond to local government applications for extension within the shortest period of time after December 2015. A period of 60 business days will add three months to the process instead of one (20 business days) and is considered too long. Local government elections scheduled for March 2016 with its associated caretaker period and post-election "settling in" period is another factor that will impact on processes and time frames to prepare LGIPs.[26]

Committee comment

The committee is satisfied with the department's advice that 20 business days is sufficient for the Minister to make a decision regarding a local government's application for extension for preparing its LGIP beyond the current cut-off date of 1 July 2016. The committee also notes the department's comments that extending the timeframe from 20 to 60 business days would adversely impact the amount of time remaining for local governments in regard to the current deadline if the application is refused. The committee supports the 20 business day timeframe.

Two-year extension timeframe

There was some concern that the proposed two-year extension timeframe for local governments to prepare their LGIPs was too long. The PCA suggested that a more 'reasonable timeframe' for an extension for local governments would be up to one year, ending on 1 July 2017:

> The proposed extension of time provision that could allow a local government until 1 July 2018 to adopt their LGIP means that local governments will have had close to four years to prepare and adopt a plan.[27]

[24] Council of the City of Gold Coast, submission 5.

[25] Property Council of Australia, submission 3.

[26] Department of Infrastructure, Local Government and Planning, correspondence dated 12 October 2015, p 8.

[27] Property Council of Australia, submission 3.

The PCA was concerned that the proposed two-year extension demonstrated that local governments were not being 'held to account in meeting a statutory deadline associated with infrastructure planning.'[28]

The department explained its reasons for proposing an extension and clarified that it would not be proposing any future extensions for the preparation of LGIPs:

> Local governments have been required since 2004 to adopt infrastructure plans in their planning schemes. A few have been struggling or were uncommitted to achieve this outcome. The new infrastructure planning and charges framework which commenced on 4 July 2014 introduced much improved tools, mechanism and prescribed processes to facilitate the preparation and implementation of LGIPs in a transparent and consistent way. The requirement (since 4 July 2014) that a local government without an LGIP will not be able to levy infrastructure charges after the deadline hold significant financial implications for them.
>
> Accordingly, it is proposed to extend the deadline for a further two years to remove any basis for an excuse not to achieve the requirement to adopt an LGIP. It is expected that the proposed amendments will commence no earlier than December 2015 which leaves six months to the current deadline of 1 July 2016.
>
> …
>
> It can be clarified to local governments that no further extensions after the proposed deadline of 1 July 2018 will be considered.

In response to concerns that the proposed two-year extension might not be long enough for local governments to prepare their LGIPs, the department advised that much of the work had already been progressed. Additionally, the department stated:

> We are confident that two years is enough. Those councils who want to charge for infrastructure can do it in that two-year period. That is why we are looking for a project plan and resource commitment from them to do that. The outcome at the end of the two years is that if they not have a plan they cannot charge for the period until they do have a plan. So there is an incentive for them to ensure that they have a plan in place at that point.[29]

The Shopping Centre Council of Australia (SCCA) was also critical of the proposed two-year extension and suggested the following actions be considered to alleviate potential consequences of the extended timeframe, including:

- monitoring a council's progress against its project plan
- providing recourse if a council is proven to be unable to achieve the targets/progress in its project plan
- adopting a policy position if local governments have not finalised their infrastructure plans by the extended cut-off date of 30 June 2018.[30]

SCCA's underlying concern could be summarised as:

> … we do not want to see this concession to the local government sector to result in a drawn out, unaccountable and expensive process which sees no improvement in the delivery of local government infrastructure across Queensland.[31]

In regard to the policy position and recourse for local governments not submitting their LGIPs by 30 June 2018, the department advised that there would be no further extensions to the cut-off date

[28] Property Council of Australia, submission 3.
[29] Public briefing transcript, Brisbane, 1 October 2015, p 7.
[30] Shopping Centre Council of Australia, submission 6.
[31] Ibid.

and emphasised that councils would not be able to levy charges if they did not submit their LGIPs by the cut-off date.[32]

In response to SCCA's call for the department to monitor council's progress on its LGIP, the department advised:

> The proposed amendments require local governments to prepare a project plan identifying the main steps, time frames as well as the necessary resources (money, expertise, consultants) to complete an LGIP. They are further required to resolve formally to make a submission to the Minister for an extension of time to prepare the LGIP. This process was prescribed to ensure that senior local government managers and elected members are all aware and committed to prepare and adopt an LGIP within the required time frames.[33]

Committee comment

The committee is satisfied with the length of extension and notes the department's advice that the amount of time would result in more considered plans.

The committee also notes that no further extensions would be considered after the proposed deadline of 1 July 2018 and that this provides certainty for industry. The department advised the committee that this would be clarified to local governments. The committee requests the Deputy Premier advise the House how and when the department would clarify this to local governments.

Clarification 1

The committee requests the Deputy Premier advise the House how and when the department would clarify to local governments that no further extensions would be considered after the proposed deadline of 1 July 2018.

The committee notes that the incentive for local governments to submit their LGIPs by 30 June 2018 is to ensure that they can levy charges. However, the committee seeks clarification in relation to what may happen if a local government proves unable to achieve the steps as outlined in their project plan, submitted as part of their application for extension. In particular:

(a) any monitoring the department would conduct in relation to a local government achieving the steps outlined in their project plan,

(b) how the department would assist a local government in achieving the timeframes as set out in the project plan

(c) if there would be any consequences for local governments if they were unable to meet the requirements of their project plan, excluding not meeting the extension deadline and not being able to levy charges.

Clarification 2

The committee requests the Deputy Premier advise the House about what may happen if a local government was unable to achieve the steps outlined in their project plan submitted as part of their application for extension, in particular:

(a) any monitoring the department would conduct in relation to a local government achieving

[32] Department of Infrastructure, Local Government and Planning, correspondence dated 12 October 2015, p 9.

[33] Ibid, pp 8-9.

the steps outlined in their project plan

(b) how the department would assist a local government in achieving the timeframes as set out in the project plan

(c) if there would be any consequences for local governments if they were unable to meet the requirements of their project plan, excluding not meeting the extension deadline and not being able to levy charges.

Impact of extension on distributor-retailers

Queensland Urban Utilities (QUU) expressed concern that the failure of a participating local government to adopt an LGIP as required by the cut-off date would invalidate QUU's ability to levy its part of the infrastructure charges for water and wastewater services.[34]

The department assured QUU that this was not the case:

> Distributor-retailers (e.g. QUU) are not dependent on local government LGIPs to levy their own charges. The deadline for local governments to adopt an LGIP does not apply to, or affect distributor-retailers. Section 632 of SPA provides for a distributor-retailer and participating local government to enter into a breakup agreement (to agree how the maximum charges are split). This should already be in place for all participating local governments and distributor-retailers. Distributor-retailers are free to charge any amount for water and wastewater services up to the agreed proportion of the maximum charges.[35]

Committee comment

The committee is satisfied with the department's response.

Infrastructure Charges Notice

Local infrastructure

Local infrastructure is categorised as either trunk or non-trunk infrastructure. The classification guides the infrastructure conditions that a local government or distributor-retailer can impose on a development or water approval.[36]

Trunk infrastructure is higher-level infrastructure that is shared between multiple developments, such as water supply, sewerage, stormwater, local transport, public parks and land for community facilities.[37]

Non-trunk infrastructure is infrastructure that is not shared with other development and is generally internal to a development site.[38]

Developers have to provide all non-trunk infrastructure but the cost of trunk infrastructure is shared between developers and the relevant local government or distributor-retailer.[39]

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[34] Queensland Urban Utilities, submission 4.

[35] Department of Infrastructure, Local Government and Planning, correspondence dated 12 October 2015, p 8.

[36] Department of Infrastructure, Local Government and Planning, *Local government infrastructure framework: conversion applications – non-trunk to trunk infrastructure*, fact sheet, accessed 20 October 2015. See also, *Sustainable Planning Act 2009*, s 627.

[37] Public briefing transcript, Brisbane, 1 October 2015, p 1; Department of Infrastructure, Local Government and Planning, *Local government infrastructure framework: conversion applications – non-trunk to trunk infrastructure*, fact sheet, accessed 20 October 2015.

[38] Department of Infrastructure, Local Government and Planning, *Local government infrastructure framework: conversion applications – non-trunk to trunk infrastructure*, fact sheet, accessed 20 October 2015.

Local governments and distributor-retailers may levy charges for, or condition developers to supply, trunk infrastructure. In instances in which a developer provides trunk infrastructure rather than paying a charge, there may be offsets or refunds available against the charge.[40]

In general, if a developer develops conformably with a local government's LGIP, the developer will pay an infrastructure charge for the right to connect to the trunk infrastructure or, if the infrastructure has not yet been built, the developer may be required to provide the planned infrastructure but will get an offset against the charges otherwise payable.[41]

If a developer develops in a way that generates a need for trunk infrastructure not planned for in the LGIP, the developer is likely to have a condition imposed on the development approval requiring the provision of the necessary infrastructure.[42]

Infrastructure charges notice

An infrastructure charges notice (ICN) is issued when a development application or connections application is approved. Section 637 of the *Sustainable Planning Act 2009* (SPA) and section 99BRCK of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (SEQ Water Act) set out the information a local government and a distributor-retailer, respectively, must include in an ICN.

The ICN must state all of the following for the levied charge:

- its current amount
- how it has been worked out
- the land
- when it will be payable
- if an automatic increase provision applies:
    - that it is subject to automatic increases, and
    - how the increases are worked out under the provision, and
- whether an offset or refund applies, and if so, information about the offset or refund, including when the refund will be given.

The Deputy Premier and Minister for Infrastructure, Local Government and Planning advised the House that the information in the ICN is provided so that the developer applicant 'has a clear understanding of how the charge has been calculated and whether an offset or refund has been taken into consideration for any trunk infrastructure the developer has been conditioned to provide by either the local government or the distributor-retailer.'[43]

The Deputy Premier added:

> The information enables a developer to consider whether to negotiate or appeal the amount of the offset or refund allowed by the local government or the distributor-retailer. This has been effective in encouraging local governments and distributor-retailers to take proper account of the trunk

[39] Ibid.

[40] Public briefing transcript, 1 October 2015, p 1.

[41] Stephen Fynes-Clinton, *A commentary on the Sustainable Planning Act 2009*, June 2015, p 328; *Sustainable Planning Act 2009*, ss 646, 649.

[42] Stephen Fynes-Clinton, *A commentary on the Sustainable Planning Act 2009*, June 2015, p 328; *Sustainable Planning Act 2009*, ss 647, 650.

[43] Queensland Parliament, Record of Proceedings, 17 September 2015, p 2009.

> infrastructure being delivered by the developer when the local government or the distributor-retailer determines the appropriate charge.
>
> It has also provided certainty to applicants in relation to the value of their contribution to the cost of providing the trunk infrastructure. While this provision supports certainty and transparency at the approval stage, it can take some time to do the necessary analysis to determine the costs of required infrastructure. If a significant refund is involved, it may require budget considerations and, for a local government, a council resolution – which can take up more time and delay development approval.[44]

Proposed amendments

Clauses 11 and 9 propose to amend the SPA and the SEQ Water Act, respectively, 'to allow developers to indicate to a local government or [distributor-retailer] their preference to receive an infrastructure charges notice without offset and refund information. This arrangement will allow for those applicants who are either unconcerned about the prospect of an offset or refund or are prepared to receive this information at a later time, and will allow for a speedier development approval.'[45]

The department elaborated on how offsets and refunds were calculated in certain instances:

> In practice local governments are not solely responsible for determining information about offsets and refunds. They often have to rely on developers to provide more details of proposed development layouts and infrastructure design to determine offset and refund information. The applicant may be seeking the certainty of an approval before going in to the detailed design for local infrastructure, which will subsequently determine any potential offset or refund for the trunk component. In this situation it wouldn't be feasible for a local government to finalise their calculations when they are still waiting for detailed information from the developer. The local government and applicant have to cooperate in the process to determine the necessary information. In this regard it is also worth noting the SPA mechanism of infrastructure agreements which is often used by local governments and developers to resolve non-standard matters about infrastructure.[46]

The proposed amendments to the SEQ Water Act and SPA mirror each other to ensure there is consistency between the two Acts because 'the distributor-retailers and their participating local governments must share the infrastructure charges via an agreed apportionment.'[47]

The request to receive an ICN without offset and refund information may be made as part of the development or connection application or by letter from the applicant to the local government or distributor-retailer.[48]

If a developer decides not to receive the information about offsets and refunds in an ICN, there is no set time within which the developer will receive the information.[49]

The developer also waives certain rights with respect to the information.

> The standard application and approval process provisions provide for time frames, options to negotiate outcomes and appeal rights. It is up to the applicant to consider the risk of losing these protections when they elect to opt out of receiving details of offsets and refunds when their

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44 Ibid. See also, public briefing transcript, 1 October 2015, pp 1-2.

45 Hon Jackie Trad MP, Deputy Premier and Minister for Transport, Minister for Infrastructure, Local Government and Planning, and Minister for Trade, Queensland Parliament, Record of Proceedings, 17 September 2015, p 2009. See also, Public briefing transcript, 1 October 2015, p 2.

46 Department of Infrastructure, Local Government and Planning, email correspondence dated 12 October 2015.

47 Public briefing transcript, Brisbane, 1 October 2015, p 3.

48 Local Government and Other Legislation Amendment Bill (No. 2) 2015, explanatory notes, p 7; Local Government and Other Legislation Amendment Bill (No. 2) 2015, clauses 9, 11.

49 Department of Infrastructure, Local Government and Planning, email correspondence dated 12 October 2015.

> application is approved. They should only choose this option if they are comfortable that in relation to their particular application, the information about offsets and refunds will have a limited impact. It should not be the intention to create a second (duplicate) approval process with its own checks and balances (time frames and appeal rights) where an applicant elects not to receive the offset and refund information as part of their development approval process.

In the event that a developer chooses not to receive the offset and refund information in the ICN, the arrangements regarding offset and refund information would have to be negotiated through an agreement between the developer and the local government or distributor-retailer, such as provided for under section 639 of SPA.[50]

The department advised that the impetus for the proposed amendments in clauses 11 and 9 came from the development industry[51] and the amendments are supported by the LGAQ and the Infrastructure Charges Working Group.[52]

Submitter views

Some submitters were in favour of clauses 9 and 11, describing them as 'a step in the right direction'[53] and 'a partial solution'.[54] Three submitters recommended amendment of the Bill:

- QUU sought amendments to enable:
    - the distributor-retailer to include offset and refund information in an ICN despite a request from the applicant in circumstances where there is no delay in issuing the original infrastructure charges notice
    - an amended infrastructure notice to be given after the offset and refund information is prepared for an applicant who has opted not to receive the information in the ICN
    - the applicant's appeal rights to be maintained in relation to the amended ICN.[55]
- PCA was of the view that the provisions should be amended to ensure that appeal rights in respect of errors in the assessment of refunds are preserved for applicants who elect not to receive information about offsets and refunds in the ICN. The appeal period should be 20 business days after receipt of a decision on the treatment of refunds and offsets.[56]
- CCGC submitted that the legislation should be clearer regarding a value for offsets and refunds that are not required to be included in the ICN.[57]

The SCCA recommended that the Minister, or relevant delegate, investigate instances in which local governments or distributor-retailers fail to provide information about refunds and offsets in a timely manner.[58]

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50 Department of Infrastructure, Local Government and Planning, correspondence dated 12 October 2015, p 3.

51 Public briefing transcript, Brisbane, 1 October 2015, p 9.

52 Local Government and Other Legislation Amendment Bill (No. 2) 2015, explanatory notes, p 4.

53 City of Gold Coast, submission 5. See also, Property Council of Australia, submission 3.

54 Local Government Association of Queensland, submission 2.

55 Queensland Urban Utilities, submission 4.

56 Property Council of Australia, submission 3.

57 City of Gold Coast, submission 5. The Department of Infrastructure, Local Government and Planning contended that that the Council's submission was 'not directly related to the proposed amendment': Department of Infrastructure, Local Government and Planning, correspondence dated 12 October 2015, p 3.

58 Shopping Centre Council of Australia, submission 6.

The LGAQ made suggestions to make the offset and refund regime more equitable as, in its view, the existing framework is 'grossly inequitable' because applicants 'have the ability to apportion 100% of the trunk infrastructure costs to councils (even where most of the infrastructure is necessary for the development)'.[59]

The department noted submitters' comments but did not recommend any changes to the Bill.[60] With respect to the suggestions made by submitters, the department stated:

- The proposed amendments do not preclude a distributor-retailer or local government from including offset and refund information in an ICN.
- The amendments simply provide an alternative for applicants. Applicants can still obtain the information about refunds and offsets in an ICN, negotiate about the conditions imposed, and appeal conditions about trunk infrastructure, calculation of charges or refund arrangement imposed by the retailer-distributor or local government (within specified time periods).
- When an applicant elects not to receive information about offsets and refunds in the ICN, they 'lose the ability to negotiate or appeal issues relating to the offset and refund information. The applicant has to consider the risk when making this choice.'[61] 'Offset and refund arrangements proposed after the approval has been decided will have to be dealt with through an agreement reached between a developer and the distributor-retailer [or local government] e.g. as provided for under section 99BRCM of the SEQ Water Act'[62] and 'section 639 of SPA.'[63]
- Offsetting and crediting arrangements that are beyond the scope of the Bill can be dealt with under proposed new planning legislation.
- It is anticipated that 'refinements to facilitate the recalculation of establishment costs by a local government'[64] will be introduced at a later date.[65]

Committee comment

The committee supports the amendments proposed by clauses 9 and 11. The amendments would provide an option for a developer who is not concerned about the prospect of an offset or refund, or is willing to receive the information at a later time, to decide not to receive information about refunds or offsets in the ICN and thereby obtain an approval more quickly.

Whilst it is acknowledged that the proposed amendments were encouraged by industry, the committee had reservations about any unintended consequences of a lack of appeal rights. The committee considered that any unintended consequences may become more apparent once the amendments took effect.

Ultimately, because the amendments provide an alternative option for developers and that their appeal rights are only waivered if they opt out of receiving certain information, the committee is satisfied with the proposed amendments.

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59 Local Government Association of Queensland, submission 2.

60 Department of Infrastructure, Local Government and Planning, correspondence dated 12 October 2015, pp 1-4.

61 Ibid, pp 3-4.

62 Ibid, p 2.

63 Ibid, p 3.

64 Ibid.

65 Ibid, pp 1-4.

2.2 Amendments to the *City of Brisbane Act 2010* and the *Local Government Act 2009*

Currently, section 92D of the *City of Brisbane Act 2010* (COBA) and section 90D of the *Local Government Act 2009* (LGA) prohibit a local government from publishing or distributing election material during the caretaker period for a local government election.

Section 179 of the *Local Government Electoral Act 2011* (LGEA) requires accepted how-to-vote cards to be available for public inspection at the place of nomination, the local government's public office and on the electoral commission's website.

Under the LGEA, the electoral commission accepts how-to-vote cards if satisfied that the cards are unlikely to mislead or deceive an elector in voting and comply with certain administrative requirements.

The Bill proposes to amend COBA and LGA to correct an inconsistency with the LGEA by permitting an accepted how-to-vote card to be available for inspection at the local government's public office during the caretaker period for a local government election.

The department advised:[66]

> Without amendment, section 92D of the City of Brisbane Act 2010 and section 90D of the Local Government Act 2009 prohibit a local government from publishing or distributing accepted how-to-vote cards during the caretaker period. The ban is inconsistent with section 179(6) of the Local Government Electoral Act 2011, which requires a returning officer to ensure that before polling day for a local government election accepted how-to-vote cards are available for public inspection at the place of nomination, the local government's public office and on the Electoral Commission's website.

Committee comment

The committee notes that stakeholders did not raise any concerns in relation to the proposed amendments. The committee supports the proposed amendments in order to resolve the inconsistency.

2.3 Amendment to the *Local Government Electoral Act 2011*

Clauses 6 and 7 of the Bill propose to amend the Local Government Electoral Act 2011 (LGEA) to remove an obsolete reference to mayoral first-past-the-post voting (FPTP) as a consequence of the voting system for mayors changing on 1 January 2015 from first-past-the-post to optional-preferential voting (OPV).

The committee only received one comment from the Local Government Association of Queensland (LGAQ) in relation to the proposed amendment. The LGAQ did not have a concern with the proposed amendment, however it noted its ongoing opposition regarding the change in voting methods from FPTP to OPV as the system for electing mayors in undivided councils.[67]

Committee comment

The committee supports the proposed amendment on the basis it merely seeks to remove an obsolete reference.

[66] Public briefing transcript, Brisbane, 1 October 2015, p 3.

[67] Local Government Association of Queensland, submission 2.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' (FLP) 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.

The committee examined the application of FLPs to the Bill and considers that clauses 9 and 11 raise a potential issue of fundamental legislative principle.

Rights and liberties of individuals

Section 4(2)(a) of the LSA provides the principles of FLPs include requiring that legislation has sufficient regard to rights and liberties of individuals. Sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice.

Clause 9

Clause 9 amends section 99BRCK of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, which deals with requirements for infrastructure charges notices (ICN), by inserting a new subsection (1A).

Subsection (1A) provides that the ICN does not need to include the information required under section 99BRCK(1)(f) when the person receiving the ICN has already given written instructions/consent to the distributor-retailer stating that the subsection (1)(f) information (about the applicability of, and timing of, offsets and refunds) need not be included in the ICN.

Clause 11

Clause 11 inserts a mirror subsection (1A) into section 637 of the *Sustainable Planning Act 2009* with ostensibly the same effect for ICN issued under that Act by a local government.

Committee comment

The committee considered the impacts of these amendments on a person's appeal and review rights in section 2 above.

3.2 Explanatory notes

Part 4 of the LSA 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 contain the information required by Part 4.

Appendices

Appendix A – List of submitters

Sub #	Name
1	Southern Downs Regional Council
2	Local Government Association of Queensland
3	Property Council of Australia
4	Queensland Urban Utilities
5	Council of the City of Gold Coast
6	Shopping Centre Council of Australia

Appendix B – List of departmental officers at the public briefing held 1 October 2015

Witnesses	
1	Mr Mark Saunders, Director Planning Scheme Support, Department of Infrastructure, Local Government and Planning
2	Mr Jan Cilliers, Manager Infrastructure, Department of Infrastructure, Local Government and Planning
3	Ms Josie Hawthorne, Manager Legislation, Department of Infrastructure, Local Government and Planning
4	Ms Anita Sweet, General Manager Water Supply Policy and Economics, Department of Energy and Water Supply