Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendments Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the *Sustainable Planning (Housing Affordability and Infrastructure Charges) Amendment Bill 2011*.

Policy objectives and the reasons for them

The objectives of the Bill are to:

1. Enable the establishment, through a State planning regulatory provision (SPRP), of a new "adopted infrastructure charge" for trunk infrastructure;
2. Suspend the collection of infrastructure charges under the *Sustainable Planning Act 2009* (SPA), chapter 8, part 1, division 4, and regulated infrastructure charges under SPA, chapter 8, part 1, division 5 and the collection of charges for Distributor-retailers under chapter 9 part 7A, in favour of the new adopted infrastructure charge (for local governments) and a new charge for water and waste water services based on the adopted infrastructure charge (for Distributor-retailers);
3. Allow for the operation of some aspects of development sequencing, benchmarking and price signalling already provided for under SPA in relation to the new adopted infrastructure charge, pending completion by local governments of their priority infrastructure plans;
4. Amend the *Local Government Act 2009* (LGA09) to continue implementation matters ancillary to certain local government boundary changes determined under the repealed *Local Government Act 1993* and implemented under the LGA09; and
5. Amend the *Building Act 1975* to provide an extension, for pool owners to register their swimming pool with the Department of Local Government and Planning.

In responding to the final report (March 2011) of the Infrastructure Charges Taskforce, the Queensland Government committed to introducing a maximum infrastructure charge to apply throughout Queensland as an interim arrangement for three years, pending development of long term reforms to the infrastructure charging framework under SPA.

Achievement of policy objectives

To achieve its objectives, the Bill:

1. provides for a SPRP to:
    - establish a new "maximum adopted infrastructure charge" for trunk infrastructure under an "adopted infrastructure charges schedule"; and
    - depict priority infrastructure areas for individual local governments, to allow for continuation of a basic form of development sequencing pending completion of local government priority infrastructure plans.
2. allows for local governments to pass a resolution to:
    - increase (up to the maximum adopted infrastructure charge), reduce or dispense with the adopted infrastructure charge; and
    - provide additional information supporting the charge and related sequencing arrangements.
3. modifies existing charging arrangements for distributer retailers under the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009* and SPA to apply a charge based on the adopted infrastructure charge; and
4. amends the LGA09 to continue implementation matters ancillary to certain local government boundary changes; and
5. amends the *Building Act 1975* to provide an extension until 4 November 2011, or another date prescribed as under a regulation, for pool owners to register their swimming pool with the Department of Local Government and Planning.

This approach is a reasonable and proportionate means of achieving the objectives of the Bill. Existing arrangements within SPA are insufficient to facilitate introduction of a maximum infrastructure charging system. The new arrangements mirror existing charging mechanisms in SPA to a degree

appropriate to achieving the objects of the legislation while minimising disruption to the scheme of the Act, and consistent with the government's response to the Infrastructure Charges Taskforce Final Report (Taskforce Report.

Achieving the objectives in relation to charging arrangements in South East Queensland

In South East Queensland (SEQ), local governments only levy infrastructure charges for three of the infrastructure networks (local roads, stormwater and community facilities/parks) with Distributor-retailers responsible for water and wastewater networks. Some changes are necessary to achieve the policy objective for adopted infrastructure charges for local government and Distributor-retailers in SEQ.

Part of the institutional changes for water supply in SEQ was the creation of three new Distributor-retailers, each owned by a cluster of local governments. The Distributor-retailers are Unitywater (owned by Sunshine Coast and Moreton Bay); Queensland Urban Utilities (owned by Brisbane, Ipswich, Somerset, Scenic Rim and Lockyer Valley); and Allconnex Water (owned by Gold Coast, Logan and Redland).

The water and wastewater distribution networks previously owned by each council moved to the relevant Distributor-retailer, which plans and owns infrastructure and provides distribution and retail water and wastewater services to the areas of their owner councils. Distributor-retailers rely on revenue from water and wastewater services (i.e. user charges and infrastructure charges), to fund their operations and build infrastructure.

For an interim 3 year period to 1 July 2013, Distributor-retailers are operating under a variation of development and compliance assessment under the SPA. Local governments are using powers delegated from Distributor-retailers to undertake assessment of a development's impact on the Distributor-retailer's water and wastewater networks and services, on behalf of the Distributor-retailers. While a local government issues a development approval or compliance permit, the relevant Distributor-retailer has the powers to set infrastructure charges for an approved development.

Therefore, while the Bill provides for applying an adopted infrastructure charges regime to Distributor-retailers, this regime will only apply for the remainder of the interim period for Distributor-retailers which ends at 30 June 2013. From 1 July 2013, the Distributor-retailers will no longer be

operating under the SPA for assessment of the water and wastewater components of development applications. It is intended to legislate to provide the Distributor-retailers with separate powers to assess and approve applications to connect to their infrastructure networks in place of development applications or requests for compliance assessment. Therefore it is intended that the new infrastructure charging regime ceases to have effect on Distributor-retailers from 1 July 2013.

The Bill provides that the SPRP may set out the arrangements for a proportional split of an adopted infrastructure charge between a Distributor-retailer and the relevant local government for the period ending 30 June 2013. Distributor-retailers may, under the Bill, effectively levy a charge for their water and wastewater services separate from the adopted infrastructure charge. The minimum and maximum amounts a Distributor-retailer can levy will be determined having regard to the adopted infrastructure charges framework, and apportionment arrangements agreed between the Distributor-retailer and the relevant local government, or, in the absence of an agreement, stated in the SPRP.

However, SEQ local governments have been given the opportunity to opt out of Distributor-retailers and re-establish their local government's water and wastewater businesses – with a decision on this matter to be provided to the Government by 1 July 2011. Should any local government wish to opt out, the State Government intends to implement this via amendments to the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009* in early 2012, with any new local government water and wastewater businesses to be in place by 1 July 2012. The Queensland Competition Authority will continue to monitor the price setting (both infrastructure charges and user/consumption charges) by Distributor-retailers, and it is intended to apply this to any local government's that re-establish their water and wastewater businesses. Any changes needed to ensure the adopted infrastructure charges regime continues to apply to all water and wastewater service providers in SEQ, would be provided for in the 2012 Bill.

Achieving the objectives in relation to *Local Government Act 2009 (LGA09)* amendments

The objectives of the LGA09 are to continue implementation matters ancillary to certain local government boundary changes determined by the Local Government Electoral and Boundaries Review Commission (the

Commission) under the repealed *Local Government Act 1993* (LGA93) and implemented under the LGA09.

Before the repeal on 30 June 2010 of the LGA93, Ipswich City Council (supported by Scenic Rim Regional Council) and Wujal Wujal Aboriginal Shire Council (supported by Cook Shire Council) made, on 18 May 2010 and 2 June 2010 respectively, application to the Commission to change their external boundaries under the LGA93. The Commission determined that the boundaries be changed under the LGA93 and the boundary changes were implemented under the LGA09.

During the drafting of the regulations to provide for the Ipswich/Scenic Rim and Wujal Wujal/Cook boundary changes, the Office of the Queensland Parliamentary Counsel (OQPC) advised that the LGA09 does not give power to make a regulation to provide for ancillary implementation matters as was previously provided for under the LGA93. Implementation matters include the transfer of ownership of Local Government assets, such as any material associated with a road or a bridge, and the continuation of planning schemes for persons affected by the boundary changes.

OQPC advised that two regulations were required. The regulations made on 17 September 2010, amended the *Local Government (Operations) Regulation 2010* to give effect to the Ipswich/Scenic Rim and Wujal Wujal/Cook boundary changes and the *Local Government (Transitional) Regulation 2010* (2010 Transitional Regulation) dealt with implementation matters ancillary to those boundary changes.

The head of power in the LGA09 to make a transitional regulation and 2010 Transitional Regulation will expire on 2 July 2011.

The amendments to the LGA09 continue implementation matters necessary to facilitate the change in external boundaries between Ipswich City Council and Scenic Rim Regional Council, and between Wujal Wujal Aboriginal Shire Council and Cook Shire Council, following expiry of the Transitional Regulation 2010 on 2 July 2011.

The implementation matters that are to continue in force under the LGA09 relate to actions started by the former Local Government, including the performance of a function or the exercise of a power; assets and public works; planning schemes; and document references.

Achieving the objectives in relation to *Building Act 1975* amendments

As part of the Queensland Government's comprehensive pool safety improvement strategy, a requirement was introduced for swimming pool owners to ensure their pool was registered on the State pool register. This was to assist with pool safety improvement and education activities, contribute to water safety research and assist Local Governments to administer the laws by allowing them to focus their enforcement activities.

The Building Act 1975 (BA) previously required pool owners to register their pools by 4 May 2011. A maximum penalty of 20 penalty units (currently equivalent to $2 000) applies to homeowners for failure to register a pool by the required date. Both State and Local Governments have the ability to enforce these provisions under the BA.

Significant natural disasters affected the majority of the State in late 2010 and early 2011. Many swimming pool owners are expected to have suffered significant property damage due to these disasters and it is considered unreasonable to require these property owners to register their pool under these circumstances. In consideration of these sensitivities, and in order to reduce any potential impediment of community disaster recovery, an extension of time is required for pool owners to register their pools. The objective of the amendments is to protect pool owners who may have been seriously affected by natural disasters from prosecution for failing to register their pool by 4 May 2011.

Alternative ways of achieving policy objectives

The introduction of a maximum infrastructure charging framework under the SPA framework necessitates legislative change. There are no means under subordinate legislation, statutory instruments or administrative arrangements to achieve a charging system with the features announced by the Government in its response to the Taskforce Report.

Estimated cost for government implementation

Administrative costs to government in the implementation of the Bill are:

1. costs associated with the development and introduction of the SPRP facilitating the charge, including costs in the preparation, public consultation, evaluation of submissions, and approval and publication of the SPRP

2. costs associated with amending existing statutory guidelines on the preparation of local government priority infrastructure plans to accommodate the new charging mechanism
3. costs associated with training and development of educational materials in relation to the introduction of the new charge
4. costs to local government in adjusting administrative systems to accommodate the new charge, and making resolutions under the arrangements
5. costs to local governments in terms of possible revenue forgone in cases where funds collected through current infrastructure charging/conditioning mechanisms exceed those obtainable under the adopted infrastructure charge
6. costs to Distributor-retailers in terms of any adjustment to administrative systems and of possible revenue forgone, in the same way as would apply to a local government under the preceding two points.

These costs will be offset by efficiency benefits obtainable through the standardisation of charging. In particular, it will no longer be necessary for local governments to individually develop complex infrastructure charging schedules in support of their priority infrastructure plans. Other aspects of priority infrastructure plans are also likely to be simplified under a maximum infrastructure charging regime. State agencies will no longer need to devote time and resources to the evaluation of draft Infrastructure charges schedules.

Costs to the State government can be absorbed from within existing departmental budgets.

The key financial benefits resulting from the Bill will benefit the community, through improved housing affordability arising from the introduction of a maximum infrastructure charging framework.

Changes proposed to the LGA09 are of a technical nature and there are no costs to Government.

Consistency with fundamental legislative principles

The Rights and Liberties of Individuals

The Bill provides for a maximum infrastructure charge to be established under a statutory instrument (a SPRP), to replace a range of charges under

existing mechanisms, most of which are less transparent than the new charge. The Bill provides for local governments to vary a limited number of aspects of the charge through a publicly accountable and available resolution, always in a manner beneficial to individuals subject to the charge (e.g. through reducing the amount of the charge). Consequently individuals potentially subject to the charge will always be able to ascertain the exact amount of the maximum charge and the circumstances under which it will apply.

The Bill introduces no new administrative decision-making processes and no decisions under the Bill are subject to administrative discretion. Notwithstanding this, the Bill expands existing appeal provisions under SPA, section 478, dealing with the quantum and reasonableness of particular charges, to include the new adopted infrastructure charge. Also, extensive declarations and orders powers available under SPA will be available in relation to the adopted infrastructure charge.

Natural Justice

As the Bill provides for a uniform and clearly ascertainable charge, there is little or no scope for bias or a lack of procedural fairness in its application. Notwithstanding this, extensive powers of review and appeal are afforded in relation to the charge, as indicated above.

Most existing mechanisms for requiring monetary contributions for infrastructure, which will be replaced by the charge, have considerably greater potential for inconsistency with principles of natural justice, as they rely on an administrative decision making processes (the Integrated Development Assessment System (IDAS) under SPA, chapter 6).

Delegation

The Bill does not provide for delegation of administrative decision-making. Consequently any delegation of administrative decision-making powers would be within the established frameworks under the relevant Acts amended by the Bill.

Onus of Proof

The Bill does not provide for the reversal of onus of proof in criminal proceedings.

Powers of Entry

The Bill contains no powers of entry, search or seizure.

Self-incrimination

The Bill does not affect existing protections against self-incrimination.

Retrospectivity

The Bill contains no provisions with direct retrospective affect.

The Bill introduces a new infrastructure charging mechanism which will replace three other existing mechanisms. As charges under SPA are levied in relation to development approvals, a situation could arise where a development application has been made but not decided on the day the new charging arrangements commence. In these circumstances the new charging arrangements will apply to any development approval given after the commencement of the arrangements.

Immunity from proceeding or prosecution

The Bill does not confer immunity from proceeding or prosecution.

Compulsory Acquisition with fair compensation

The Bill does not provide for compulsory acquisition. Clause 17 (section 648H(2)) provides for a local government, in addition to or instead of a charge notice, issue a notice requiring the giving of land in fee simple in lieu of a charge. The value of the land required under the notice cannot exceed the value of the charge. This accommodates circumstances where trunk infrastructure to which the charge will be applied is located on the premises subject to the application (for example parkland). This is a longstanding legislative arrangement in respect of existing charging mechanisms and does not amount to compulsory acquisition, the taking of the land is in lieu of a statutory charge, and the owner has a choice about whether or not to develop the premises, and hence whether the land is taken.

Clarity

The infrastructure funding framework under SPA is complex, as it deals with complex costing and funding mechanisms within a framework of competitive neutrality, transparency and fairness. The new adopted infrastructure charge has been designed to be consistent as far as possible with existing charging mechanisms under SPA, with which users are already familiar.

All key terms are clearly defined and each new definition affords an accurate précis of the meaning of the term it defines. As far as possible

existing defined terms have been used, or if necessary, adapted or expanded for the purposes of the Bill.

Rights and Liberties Generally

The Bill provides for a charge to be imposed to fund trunk infrastructure made necessary by development approved under a development approval or compliance permit. It also extends existing arrangements for applicants to be required, through a condition of the approval, to mitigate additional costs imposed due to unanticipated or out-of-sequence development.

The Bill contains extensive provisions to ensure that these arrangements work in a fair, equitable and proportionate way. For example:

- To the extent the Bill abrogates rights to the enjoyment of property through imposing a charge, this is only in the context of the conferral of a significant benefit to the owner in the form of a development approval. If rights under the approval are not exercised, the Bill requires the charge to be refunded. The Bill requires the charge to be applied to fund trunk infrastructure to service development generally, so cannot be applied to fund items unrelated to the benefit obtained through the approval.
- The amount of the maximum adopted charge will be clearly articulated in the SPRP, and will be capped.
- There are extensive, consistent and transparent means of determining and applying the charge.
- The Bill provides for extensive rights of review and appeal against the calculation and application of the charge.
- As additional cost requirements form a condition on a development approval, there are extensive rights of merit based appeal available.

The Bill allows for the Minister to escalate the maximum charge under the SPRP by an annual amount no greater than the three year rolling average of the Australian Bureau of Statistics PPI Construction Index (Queensland Roads and Bridges). This effectively amends the SPRP without applying the normal consultation arrangements under the SPA. SPA already contains similar arrangements with respect to infrastructure charges schedules (see SPA, section 631(3)) reflecting widely accepted expectations that costs will rise annually generally in line with inflation.

Consultation

SPA amendments

The Bill reflects the recommendations of the Infrastructure Charges Taskforce established in response to the outcomes of the 2010 Growth Summit. The Taskforce's composition was representative of a broad range of interests including the development industry, finance sector, local government and State agencies.

The Taskforce presented an interim report, which was released for public consultation on 18 November 2010, with the final day for submissions being 15 December 2010. Seventy-three submissions were received and were considered by the Taskforce in presenting its final report.

A key vehicle for setting the amount of the charge under the Bill is a SPRP. SPA requires SPRP's to be subject to public consultation for at least 30 business days, ensuring the final proposed charge rates under the Bill will be subject to further public scrutiny.

LGA09 amendments

As the amendments to the LGA09 are technical in nature and continue existing implementation matters for the Ipswich/Scenic Rim and Wujal Wujal/Cook boundary changes, no consultation has been undertaken.

BA amendments

Members of the Pool Safety Council have been consulted and support the proposed amendment to the BA.

Consistency with legislation of other jurisdictions

There is no national scheme in relation to the matters covered by the Bill. All other State jurisdictions make legislative provision for funding of trunk infrastructure through development charges or contributions, however there is no consistency in approach between States.

Notes on provisions

Part 1 Preliminary

Short Title

Clause 1 states the short title of the Bill. The title reflects the important role of simple, transparent and fair infrastructure charging in contributing to housing affordability.

Commencement

Clause 2 states that Part 3 commences on 2 July 2011.

The amendments to the *Sustainable Planning Act 2009* will commence on assent, but will not have substantive effect until the SPRP mentioned in the provisions takes effect. Early commencement will, however, allow for the preparation of the SPRP, the making of adopted infrastructure charges resolutions (see new section 648C) by local government, the entering into of agreements between participating local governments and Distributer-retailers, and for necessary administrative arrangements to be put into effect before the commencement of the SPRP.

Part 2 Amendment of the Building Act 1975

Act amended

Clause 3 states this part amends the *Building Act 1975.*

Amendment of s 246AR (Owner's obligation to give notice of existing regulated pool)

Clause 4 will extend the period in which the owner of a swimming pool must give the Chief Executive of the Department of Local Government and Planning details of that pool. The deadline will be extended from 4 May

2011 to a date prescribed by Regulation. The amendment takes effect from 4 May 2011. In the event that the Bill is passed by the House, it is the intention of the Government to recommend that a regulation be made to extend the pool registration date to 4 November 2011.

This amendment was introduced in light of the natural disasters that affected the majority of the State in late 2010 and early 2011. It was intended to reduce any impediment of community disaster recovery.

Insertion of new ch 11, pt 12

Clause 5 prohibits the starting or continuation of a proceeding against a pool owner under the pre-amended section 246AR of the BA for failing to notify the Chief Executive of details of their pool.

The intention of the clause is to ensure that pool owners are protected from prosecution in the period between 4 May 2011 and the commencement of the amendments to clause 246AR explained in clause 4.

Part 3 Amendment of Local Government Act 2009

Act amended

Clause 6 states this part amends the *Local Government Act 2009.*

Insertion of new ch 10

Clause 7 inserts new chapter 10 (Transitional provision for Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011) and new section 293.

New section 293 continues in force implementation matters required to facilitate the change in external boundaries between Ipswich City Council and Scenic Rim Regional Council, and between Wujal Wujal Aboriginal Shire Council and Cook Shire Council following expiry of the *Local Government (Transitional) Regulation 2010* on 2 July 2011.

Before the repeal on 30 June 2010 of the *Local Government Act 1993*, Ipswich City Council (supported by Scenic Rim Regional Council) and

Wujal Wujal Aboriginal Shire Council (supported by Cook Shire Council) made, on 18 May 2010 and 2 June 2010 respectively, application to the Local Government Electoral and Boundaries Review Commission (the Commission) to change their external boundaries under the *Local Government Act 1993*. The Commission determined that the boundaries be changed under the *Local Government Act 1993* and the boundary changes were implemented under the *Local Government Act 2009*.

On 17 September 2010, the *Local Government (Operations) Regulation 2010* was amended to give effect to the Ipswich/Scenic Rim and Wujal Wujal/Cook boundary changes and the *Local Government (Transitional) Regulation 2010* was made to deal with implementation matters ancillary to those boundary changes. The head of power in the *Local Government Act 2009* to make a transitional regulation and the *Local Government (Transitional) Regulation 2010* will expire on 2 July 2011.

The implementation matters provided for under new section 293 relate to actions started by the former local government, including the performance of a function or the exercise of a power; assets and public works; planning schemes; and document references.

Part 4 Amendment of Sustainable Planning Act 2009

Act amended

Clause 8 states this part amends the *Sustainable Planning Act 2009.*

Amendment of s 20 (Power to make State planning regulatory provision)

Clause 9 adds a reference to an adopted infrastructure charges schedule to the existing infrastructure charging mechanisms which a SPRP can provide for stated under section 20.

Amendment of s 185 (Representations about conditions and other matters)

Clause 10 includes a reference to adopted infrastructure charges notices and negotiated adopted infrastructure notices to existing arrangements for

giving new charges notices when an applicant makes successful representations resulting in a change to a decision notice for a development approval.

Amendment of s 282 (Referral agency assesses application)

Clause 11 adds a reference to an adopted infrastructure charges resolution to the matters a referral agency, with relevant jurisdiction, can assess.

Amendment of s 313 (Code assessment – generally)

Clause 12 adds a reference to an adopted infrastructure charges resolution to the matters an assessment manager can assess when carrying out code assessment. As for a priority infrastructure plan (which is part of a planning scheme), this would provide a basis for the assessment manager to impose any relevant conditions under chapter 8, part 1, divisions 6 or 7, dealing with necessary trunk infrastructure or additional costs for development outside a priority infrastructure area.

Amendment of s 314 (Impact assessment – generally)

Clause 13 adds a reference to an adopted infrastructure charges resolution to the matters an assessment manager can assess when carrying out impact assessment. As for a priority infrastructure plan (which is part of a planning scheme), this would provide a basis for the assessment manager to impose any relevant conditions under chapter 8, part 1, divisions 6 or 7, dealing with necessary trunk infrastructure or additional costs for development outside a priority infrastructure area.

Amendment of s 364 (Giving new infrastructure charges notice or regulated infrastructure charges notice)

Clause 14 adds a reference to an adopted infrastructure charges notice to arrangements for a local government to give a new notice, if development in a negotiated decision notice differs from that originally approved to such an extent that the amount payable under the relevant charges notice is changed.

Amendment of s 388 (Deciding request)

Clause 15 amends the current reference to an infrastructure charge to a charge under chapter 8 part 1. This encompasses both regulated infrastructure charges, and the new adopted infrastructure charge, in addition to the existing reference to infrastructure charges. The clause provides for assessment managers to consider the current policy and charging environment when assessing a request to extend the currency of a development application. It is appropriate for this consideration to encompass charging liabilities under any of the existing charging mechanisms, as well as the new adopted infrastructure charge.

Amendment of s 478 (Appeals about particular charges for infrastructure)

Clause 16 adds a reference to the adopted infrastructure charge to existing appeal provisions for the Planning and Environment Court in relation to charges. Section 478(5) is replaced, reflecting the inclusion of adopted infrastructure charges, and a change in the reference to "the methodology" to "any methodology". The latter change reflects the possibility that either a regulated infrastructure charge or an adopted infrastructure charge may not necessarily be established according to a "methodology" but may simply be stated in a regulation or SPRP respectively.

Amendment of s 535 (Appeals about charges for infrastructure)

Clause 17 makes similar changes to those in the previous clause in relation to Building and Development Dispute Resolution Committees.

Insertion of new chapter 8, pt 1, div 2A

Clause 18 inserts a new division 2A in chapter 8, part 1, consisting of a new section 626A. This section provides for powers to impose conditions for the supply of certain development infrastructure similar to those for "non-trunk" infrastructure in the preceding section 626. The new section 626A will apply in circumstances where there is no priority infrastructure plan or adopted infrastructure charges resolution identifying trunk infrastructure for the relevant local government area.

Current section 626 relies on there being a priority infrastructure plan in effect identifying trunk infrastructure. That section provides that a condition can require provision of infrastructure not identified as trunk

infrastructure in a priority infrastructure plan (non-trunk infrastructure) in circumstances set out in that section.

Unlike existing charging mechanisms, the new adopted infrastructure charge may be applied in circumstances where there is no priority infrastructure plan, or adopted infrastructure charges resolution identifying trunk infrastructure. For consistency with existing charges, which must be applied to "trunk infrastructure", the definition of "trunk infrastructure" in schedule 3 has been amended to state that, where there is no priority infrastructure plan or adopted infrastructure charges resolution, "trunk infrastructure" means all development infrastructure, excluding infrastructure that has been required to be supplied under the limited circumstances set out in section 626A (primarily infrastructure internal to the premises). In this context "non-trunk" infrastructure is defined progressively as such conditions are imposed and not identified beforehand in a priority infrastructure plan, as with the current arrangements.

Amendment of s 629 (Funding trunk infrastructure for local governments)

Clause 19 amends section 629 by inserting a reference to division 5A.

Insertion of new chapter 8, pt 1, div 5A

Clause 20 inserts the following new sections providing for the adopted infrastructure charge **-**

Section 648A (Meaning of adopted infrastructure charge) – defines an adopted infrastructure charge for trunk infrastructure.

Section 648B (Charges for infrastructure under State planning regulatory provision) – allows for a SPRP to provide for an adopted infrastructure charge, identify development to which the charge applies, and include an adopted infrastructure charges schedule. The SPRP may establish different maximum charges in different locations, or for different types of development.

The SPRP can also include a priority infrastructure area. This is intended to form a basis, together with aspects of an adopted infrastructure charges resolution under section 648C for a basic form of cost impact mitigation conditioning, similar to that available in relation to a priority infrastructure plan.

Section 648C (Minister may change adopted maximum charge) – provides for the amount of the charge to be adjusted for inflation.

Section 648D (Local government may decide matters about charges for infrastructure under State planning regulatory provision) – allows for local governments to pass a resolution (an "adopted infrastructure charges resolution") which may increase (up to the amount of the maximum adopted infrastructure charge), reduce or dispense with the charge in all or part of its local government area.

The resolution may also provide for discounting the charge to reflect the usage of the trunk infrastructure for which the charge is levied by the premises for which the charge is stated. This is commonly referred to as a "credit". For example, if the development for which the charge is stated involves six dwelling units which are proposed to replace an existing single dwelling on the premises, a credit may be given reflecting the use of the premises by the existing dwelling.

The resolution may include some basic information about trunk infrastructure similar to that in a priority infrastructure plan. This information can include the identification and costing of trunk infrastructure networks, as a basis for conditioning for the cost impacts of out of sequence development.

Section 648D also provides that for a participating local government under chapter 9, part 7A, a resolution cannot:

- reduce the amount of the adopted infrastructure charge below that which represents the Distributor-retailer's "standard amount" (see explanatory note on clause 36 – section 755A); or
- increase the adopted charge beyond an amount equal to the sum of the Distributor-retailer's standard amount and the local government's "relevant proportion" of the maximum charge.

The "relevant proportion" for a local government and a Distributor-retailer is defined in the dictionary as the proportion agreed on between the local government and the Distributor-retailer, or in the absence of an agreement, the proportion stated in the SPRP.

Section 648D also deals with aspects of the process for publicly notifying the resolution.

Section 648E (When adopted infrastructure charge cannot be levied) – states that the charge may not be levied in relation to development:

- under particular mining, petroleum and gas legislation;
- in an Urban Development Area under the *Urban Land Development Authority Act 2007*; or
- in a declared master planned area, unless a local government adopted infrastructure charges resolution states the charge applies for development in the area.

Section 648F (adopted infrastructure charges notices) – provides for the levying of the charge through an adopted infrastructure charges notice, and the process for recovering and applying the charge. These arrangements are similar to those for regulated infrastructure charges notices under chapter 8, part 1, division 5.

Section 648G (Limitation on adopted infrastructure charge for participating local government) – provides that a participating local government (i.e. a local government that is a part owner of a Distributor-retailer and whose local government area provides part of the Distributor-retailer's geographic area) may enter into a written agreement with the Distributor-retailer about the proportion of the adopted infrastructure charge that each may levy for trunk infrastructure.

The local government is then limited, when levying an adopted infrastructure charge, to the agreed proportion of the adopted infrastructure charge.

However, if a participating local government and the relevant Distributor-retailer have not entered into such an agreement, the proportion of the adopted infrastructure charge that may be levied by the local government will be as set under the State planning regulatory provision. An agreement between the Distributor-retailer and local government that is entered into after the commencement of the SPRP may replace the proportional allocation of the adopted infrastructure charge set in the SPRP.

Whether proportional allocation of the adopted infrastructure charge is set by agreement or by default in the SPRP, either a local government or a Distributor-retailer may decide (by local government resolution or Board decision) to charge up to or less than their "relevant proportion" of a maximum adopted charge. For example, if there is a maximum adopted charge of $28 000 for particular development, with an agreed proportional allocation of 50:50 between the local government and the Distributor-retailer, either party may independently decide to charge up to

their maximum allowable figure of $14 000 (ie 50% of $28 000) or set their charge at a lower figure.

If a local government has passed an adopted infrastructure charges resolution under section 648D which varies the adopted charge initially established under section 648A(1)(b), the local government is limited to charging the adopted charge less the Distributor-retailer's "standard amount" established under chapter 9, part 7. This ensures that the amount the local government levies is always within its proportion of the maximum adopted charge, and does not include any amount the Distributor-retailer may obtain, either as its "standard amount", or a greater amount decided by the Distributor-retailer's board under section 755KA.

Section 648H (When adopted infrastructure charges are payable) – establishes when adopted infrastructure charges are payable. These arrangements are similar to those for regulated infrastructure charges notices under chapter 8, part 1, division 5.

Section 648I (Application of adopted infrastructure charge) – requires the charge to be used to fund the trunk infrastructure identified in the adopted infrastructure charges resolution, or if there is no resolution, trunk infrastructure generally. (In circumstances where there is no priority infrastructure plan or adopted infrastructure charges resolution, trunk infrastructure is defined as development infrastructure, excluding development infrastructure supplied through a condition under section 626A).

Section 648J (Accounting for adopted infrastructure charge) – confirms that an adopted infrastructure charge need not be held in trust.

Section 648K (Agreements about, and alternatives to, paying adopted infrastructure charge) – provides for a person who receives an adopted infrastructure charges notice to reach an agreement with the local government about paying the charge at a different time than that stated in the notice, or about supplying infrastructure instead of the charge. An agreement under this section is an infrastructure agreement for chapter 8, part 2. This allows for an applicant and a local government to agree in a transparent and accountable way for the charge to be "off-set" through the construction of physical infrastructure.

Section 648L (Adopted infrastructure charge taken to be rates) – provides that an adopted infrastructure charge is taken to be a rate for the purposes of recovery.

Amendment of s 649 (Conditions local governments may impose for necessary trunk infrastructure)

Clause 21 inserts references to adopted infrastructure charges resolutions and adopted infrastructure charges into this section to allow for a condition on a development approval to require extension of necessary trunk infrastructure to the development in certain circumstances. The resolution is intended to perform the same function as a priority infrastructure plan in relation to this section, identifying planned trunk infrastructure as a basis for conditions to mitigate the cost and other impacts of out of sequence or unanticipated development.

Amendment of s 650 (Conditions local governments may impose for additional trunk infrastructure costs)

Clause 22 adds to this section a reference to an adopted infrastructure charge. Section 650 enables local governments to impose a condition on a development approval to mitigate the cost of providing trunk infrastructure to unanticipated or out of sequence development.

Section 648B allows for the SPRP establishing an adopted infrastructure charge to also identify a priority infrastructure area for a local government area, and section 648C allows an adopted infrastructure charges resolution to add information relevant to the calculation of additional costs. Together these arrangements provide a basis for imposing a condition for additional costs under SPA, section 650(1)(a)(ii), outside a priority infrastructure area identified in a priority infrastructure plan or the SPRP. Such a condition could also be imposed if there was no adopted infrastructure charges resolution identifying matters related to trunk infrastructure, but the condition would need to be based on other information such as local government asset management plans and may not be as sustainable as a condition based on a resolution.

It is not intended that a condition under section 650(1)(a)(i), in relation to unanticipated development within a priority infrastructure area, be able to be imposed in the absence of a priority infrastructure plan, as detailed assumptions about the type, location and timing of development required to support such a condition would not be available under an adopted infrastructure charges resolution. Consequently there is no proposed amendment to section 650(1)(a)(i) referencing such a resolution.

Amendment of s 653 (Conditions State infrastructure provider may impose)

Clause 23 amends section 653 by adding references to an adopted infrastructure charges resolution and adopted infrastructure charge.

Amendment of s 655 (Requirements for conditions about additional infrastructure costs)

Clause 24 amends section 655 by omitting the term "trunk". State agencies generally do not provide development infrastructure (which forms the basis for the definition of trunk infrastructure). Section 653, subsections (1) and (2), which provides the authorisation for conditions of the type mentioned in section 655, applies to "infrastructure" and not "trunk infrastructure". The omission of the term "trunk" in section 655 consequently provides for consistency with section 653.

Amendment of s 659 (Sale of particular land held on trust by local governments)

Clause 25 amends section 659 by adding a reference to an adopted infrastructure charge. This extends the effect of this section, which requires particular accountable processes to be followed in the sale of land obtained for public parks infrastructure by way of a charge, to include land obtained through an adopted infrastructure charge.

Amendment of s 660 (Definition for pt 2)

Clause 26 amends section 660 by adding references to agreements made under new sections 648K and 648L. This characterises those agreements as infrastructure agreements for chapter 8, part 2.

Amendment of s 665 (Infrastructure agreements prevail if inconsistent with particular instruments)

Clause 27 amends section 665 by adding a reference to an adopted infrastructure charges notice.

Amendment of s 675 (Definition for pt 4)

Clause 28 amends section 675 by adding a reference to an adopted infrastructure charges notice to the definition of "relevant appeal period" in that section.

Amendment of s 676 (Application of pt 4)

Clause 29 amends section 676 by adding a reference to an adopted infrastructure charges notice. The effect is to allow a person who has been given such a notice to seek a negotiated change to the notice.

Amendment of s 678 (Consideration of representations)

Clause 30 amends section 678 by adding a reference to an adopted infrastructure charges notice.

Amendment of s 679 (Decision about representations)

Clause 31 amends section 679 by providing for a "negotiated adopted infrastructure charges notice" to be given as a result of representations made under section 677.

Amendment of s 680 (Suspension of relevant appeal period)

Clause 32 amends section 680 by adding references to an adopted infrastructure charges notice.

Amendment of s 724 (Documents local governments must keep available for inspection and purchase - general)

Clause 33 amends section 724 by establishing a register (an "adopted infrastructure charges register") similar to registers for existing charging mechanisms, and inserting references to adopted infrastructure charges resolutions.

Amendment of s 738 (Limited planning and development certificates)

Clause 34 inserts a note after section 738 confirming that SPRP's mentioned in this section include any relevant SPRP's establishing an adopted infrastructure charge under chapter 8, part 1, division 5A.

Amendment of s 739 (Standard planning and development certificates)

Clause 35 amends section 739 by adding a reference to an adopted infrastructure charges register.

Amendment of s 755A (Definitions for pt 7A)

Clause 36 amends section 755A by inserting new definitions for part 7A, being "standard amount" and "standard charge day."

Amendment of s 755J (Conditions about non-trunk infrastructure)

Clause 37 amends section 755J by adding a reference to section 626A, which enables a local government to impose conditions under this section about non-trunk infrastructure for a Distributor-retailer's water service or wastewater service.

Amendment of s 755K (Funding trunk infrastructure)

Clause 38 amends section 755K to limit the scope of this section to only charges levied by a Distributor-retailer before the "standard charge day" when the adopted infrastructure charges regime will commence.

Insertion of new ss 755KA and 755KB

Clause 39 inserts new sections 755KA and 755KB:

Section 755KA (Distributor-retailer to decide matters about adopted infrastructure charge) - provides that a Distributor-retailer's Board may decide to adopt a charge for supplying water or wastewater trunk infrastructure that is not more than the Distributor-retailer's proportional allocation of the maximum amount for an adopted infrastructure charge. This charge may apply to all or part of a Distributor-retailer's geographic area. A Distributor-retailer's Board may also decide not to charge an adopted infrastructure charge for either its water service or wastewater service for all or part of its geographic area. The Distributor-retailer's Board may choose to charge up to or less than its proportional allocation of the maximum adopted infrastructure charge, irrespective of any local government decision to charge up to or less than its proportional allocation of the maximum adopted infrastructure charge. If the Distributor-retailer's

Board does not decide to set the charge in this way, its "standard amount" will apply.

Section 755KB (Funding trunk infrastructure – levying charge on and from standard charge day) provides that a Distributor-retailer may levy a charge for supplying trunk infrastructure for its water or wastewater services, from the commencement of the adopted infrastructure charge regime (i.e. on and from the standard charge day).

A Distributor-retailer and its participating local government for the area in which the trunk infrastructure in question is supplied, can enter into a written agreement about the proportion of the adopted infrastructure charge that may be levied by the Distributor-retailer for the trunk infrastructure. In that case, the Distributor-retailer may not levy a charge that is more than the amount of the agreed proportion.

If a Distributor-retailer and its participating local government have not entered into such an agreement, a SPRP made pursuant to section 648B will set the proportion of an adopted infrastructure charge for the Distributor-retailer. In that case, the Distributor-retailer may not levy a charge that is more than the amount of the proportion set in the SPRP. In either case, the Distributor-retailer may not levy as its adopted infrastructure charge, a charge that exceeds the Distributor-retailer's proportion of the maximum infrastructure charge, irrespective of whether the participating local government resolves to charge less than or the maximum infrastructure charge as the local government adopted infrastructure charge.

A Distributor-retailer may give a person an adopted infrastructure charges notice to levy its charge, but this may only be given in relation to a development approval or compliance permit, and within specified times. The charge is not recoverable unless the entitlements under the approval or permit are exercised. The infrastructure charges notice lapses if the approval or permit stops having an effect. This section also provides for the Distributor-retailer to replace an adopted infrastructure charges notice when a negotiated decision notice is given for a development application.

Insertion of new s 755MA

Clause 40 inserts a new section **755MA (Agreements about and alternatives to paying adopted infrastructure charge)** which provides for a Distributor-retailer to enter into certain infrastructure agreements.

This applies firstly where the relevant participating local government has a priority infrastructure plan. The Distributor-retailer may enter into an agreement varying conditions under an adopted infrastructure charges notice or a negotiated adopted infrastructure charges notice with the person who has been given the notice. In these circumstances, the agreement may provide for payment of the charge at a different time or by instalments; supplying infrastructure or providing land in fee simple in place of paying all or part of the charge; or supplying alternative infrastructure to that in the notice but which delivers the same level of service.

For development infrastructure that is land, the Distributor-retailer may give a development applicant or a person who requested compliance assessment, a notice that is instead of, or in addition to, an earlier notice. This new notice may require the person to give the Distributor-retailer land in fee simple where this land is part of the land for which a development application or compliance request was submitted. Alternatively, the notice may require the person to give the Distributor-retailer a combination of such land and an adopted infrastructure charge. In either case, the value of the land alone, or land together with any charge, must not be more than the Distributor-retailer's standard amount. The person given such a notice must comply as soon as possible.

An agreement amended under this section is an infrastructure agreement.

A further situation is where the relevant participating local government does not have a priority infrastructure plan. The Distributor-retailer may enter into an agreement varying conditions under an adopted infrastructure charges notice or a negotiated adopted infrastructure charges notice with the person who has been given the notice. In this circumstance, the agreement may provide for payment of the charge at a different time or by instalments; or supplying infrastructure or providing land in fee simple in place of paying all or part of the charge.

Amendment of s 755O (Application of particular provisions – generally)

Clause 41 amends section 755O which applies certain sections of chapter 8 of the SPA to the Distributor-retailers. It applies the new sections 648E to 648J to the Distributor-retailers.

Amendment of s 755P (Application of ss 636 and 646)

Clause 42 amends section 755P by adding the new section 648J dealing with accounting for adopted infrastructure charges, to the sections applying to Distributor-retailers.

Amendment of s 755W (Appeals about infrastructure charge or regulated infrastructure charge)

Clause 43 amends section 755W by adding an appeal in relation to an adopted infrastructure charges notice to the matters to which section 478 (Appeals about a particular charges for infrastructure) applies.

Insertion of new ch 10, pt 4

Part 4 Transitional provision for Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011

Clause 44 inserts a new part 4 in chapter 10 containing the following transitional provisions:

Section 879 (Extended application of s 856 for adopted infrastructure charges) extends the application of section 856 (dealing with rezoning agreements under repealed legislation) to include adopted infrastructure charges. The effect is to prevent "double dipping" by ensuring that the amount of the charge is adjusted to take account of any money payable under the agreement.

Section 880 (When local government must not levy particular charges for infrastructure) extends the effect of section 847(8), dealing with the payment of contributions levied through a condition of a development approval in accordance with a planning scheme policy.

Subsection 2 effectively "switches off" the ability to impose a condition under a planning scheme policy to which section 847 applies, or levy an

infrastructure charge or regulated infrastructure charge, from the day the SPRP establishing an adopted infrastructure charge takes effect, until the SPRP expires or is repealed. Subsection (3) confirms that rights, liabilities and actions in relation to a charge or contribution already levied or imposed at the time the SPRP takes effect are not affected.

Section 881 (Effect of local government resolution made before commencement of amending Act) provides for a local government to make an adopted infrastructure charges resolution before the day the SPRP establishing the charge takes effect. This will allow local governments to establish the particular aspects of their charging framework, such as varying the amount of the charge, and identifying trunk infrastructure networks to which the charge will be applied, in preparation for the commencement of the new charging arrangements, thereby providing certainty for applicants.

Section (3) provides that the resolution has no effect to the extent the amount of the charge under the resolution exceeds the maximum charge under the SPRP.

Amendment of sch3 (Dictionary)

Clause 45 inserts references in the dictionary to newly defined terms under the Bill, including "relevant proportion", and amends the definitions of "desired standard of service", "negotiated regulated State infrastructure charges notice" and "priority infrastructure area".