

Queensland Heritage and Other Legislation Amendment Bill 2014

Explanatory Notes

FOR

Amendments to be Moved During Consideration in Detail by The Honourable Andrew Powell MP

Title of the Bill

The short title of the Bill is the Queensland Heritage and Other Legislation Amendment Bill 2014 (the Bill).

Objectives of the amendments

Queensland Heritage Act 1992

The amendments to clauses of the Bill that amend the *Queensland Heritage Act 1992* will correct minor errors and clarify and improve its operation. They are made in response to the comments and recommendations in Report No. 55 of the Transport, Housing and Local Government Committee on the Bill.

Infrastructure charges

The Bill includes amendments to the *Sustainable Planning Act 2009* (SPA) relating to the local infrastructure planning and charging framework in Queensland that supports local government and distributor-retailer (local authority) sustainability and development feasibility.

The objective of the amendments to the Bill is to clarify the intention of some of the key provisions and ensure that the processes required to levy infrastructure charges and set infrastructure conditions are practical and efficient.

Declared master planned areas

The objective of the amendment is to clarify what is required for a local government to comply with under section 761A to incorporate a structure plan for a declared master planned area in a planning scheme made under SPA.

Achievement of policy objectives

Queensland Heritage Act 1992

The objectives to be achieved by amendment of the Bill in relation to the *Queensland Heritage Act 1992* are described in the notes on provisions.

Infrastructure charges

The policy objectives are achieved through the amendments to the Bill that:

- Clarify that local government planning schemes need not include a local government infrastructure plan (LGIP) until 1 July 2016;
- Clarify that after 1 July 2016, an LGIP is only required for local governments that intend to levy infrastructure charges or impose conditions about trunk infrastructure;
- Provide for an infrastructure charges notice to be issued where a condition about infrastructure contributions was previously imposed under a planning scheme policy and change request for the development has been submitted;
- Address inaccuracies relating to technical matters such as the methodology to calculate charges;
- Clarify the intended application of some clauses of the Bill.

Declared master planned areas

When SPA commenced in 2009, Chapter 4 (Planning Partnerships) provided a process required to identify and designate master planned areas, the process for making structure plans, and the process for preparing and approving master plans. These arrangements reflected the intent that structure plans and master plans are planning documents developed in a collaborative way, involving State and local government and communities.

Upon approval, the structure plan for a declared master planned area was required to be a part of local government planning schemes, that were made and in effect under the repealed *Integrated Planning Act 1997* (IPA), prior to the commencement of SPA.

In 2012, Chapter 4 of SPA was repealed under the *Sustainable Planning and Other Legislation Amendment Act 2012* on the basis that planning partnerships could be achieved in a number of other ways, without requiring the framework provided in Chapter 4. No further master planned area declarations may be made.

For the existing declared master planned areas, section 761A of SPA requires that a local government must make a new planning scheme compliant with SPA, and that the structure plan is to be incorporated in the new planning scheme.

The amendment clarifies what is required for a local government to comply with the existing requirement to incorporate a structure plan in a planning scheme.

Alternative ways of achieving policy objectives

Queensland Heritage Act 1992

With regard the *Queensland Heritage Act 1992*, legislative amendments are the only means of achieving the policy objectives.

Infrastructure charges

There are no alternative ways of achieving the intended objectives of the amendments. However, where possible, clarification will be provided through non-statutory guidance, statutory planning instruments (for example, the maximum adopted charges will continue to be set through a State planning regulatory provision) and statutory guidance (for example, in relation to the preparation of LGIPs) as appropriate.

Declared master planned areas

There is no alternative approach to achieve the policy objective. Section 761A of SPA is a transitional provision that continues the requirement that a structure plan must be incorporated into a planning scheme compliant with SPA.

There is no other regulatory instrument that can be used to clarify what is required for a local government to comply with this requirement.

Estimated cost for government implementation

Queensland Heritage Act 1992

It is not anticipated that the legislative amendments in relation to the *Queensland Heritage Act 1992* will give rise to any additional cost for the government.

Infrastructure charges

Apart from some minor administrative costs, it is not anticipated that the changes will result in any costs for local government.

Declared master planned areas

The amendment does not impose new regulatory requirements or costs for state or local government. It simply clarifies what matters the Minister and local government must consider

when a structure plan for a declared master planned area is incorporated in a planning scheme made under SPA.

Consistency with fundamental legislative principles

Queensland Heritage Act 1992

The amendments to the Bill related to the *Queensland Heritage Act 1992* are consistent with the fundamental legislative principles set out in section 4 of the *Legislative Standards Act 1992* and those generally recognised. An amendment of the Bill inserts new section 83(3), which provides that the matters the Minister must consider in being satisfied a local government has appropriate procedures in place to issue essential repair and maintenance notices for local heritage places. This raises the potential issue of whether sufficient regard is had for the institution of Parliament and amendment of an Act only be effected by another Act. The matters prescribed in the regulation will be required to stay within the scope of the Act, being open to the scrutiny of Parliament. The provision will deliver consistency and transparency in decision-making by requiring that these matters be established before local governments are prescribed. Local governments wishing to be prescribed will be made aware of the matters they will need to satisfy the Minister about.

Infrastructure charges

The proposed amendments to the Bill are consistent with fundamental legislative principles.

Declared master planned areas

The amendment does not breach any fundamental legislative principles.

Consultation

Queensland Heritage Act 1992

The amendments to the Bill relating to the *Queensland Heritage Act 1992* are made in response to Report No. 55 of the Transport, Housing and Local Government Committee. The Department of the Premier and Cabinet and the Office of the Queensland Parliamentary Council has been consulted about the proposed amendments.

Infrastructure charges

The amendments are primarily made to clarify the implementation of the long-term local infrastructure planning and charging framework in Queensland, that supports local government sustainability and development feasibility and to address issues of inconsistency.

The new infrastructure planning and charging framework commenced on 4 July 2014 following extensive consultation over a period of 18 months with stakeholders including local government and the development industry. The Queensland Heritage and Other Legislation Amendment Bill 2014 amendments were identified during the early implementation phase of the new framework by departmental staff, consultants and local government staff.

Declared master planned areas

The Office of Best Practice Regulation considers that the amendment is unlikely to have significant adverse impacts and no further analysis is required under the Regulatory Impact Statement system Guidelines.

Local governments with declared master planned areas within its local government area are aware of the existing requirement under section 761A. Discussions about compliance with section 761A have been held where the local government is seeking to make a SPA-compliant planning scheme and need to transition the declared master planned area into the new planning scheme.

No specific consultation on this amendment has been undertaken. The amendment does not change any process or requirement of local government in making or amending a SPA planning scheme, and is consistent with the general provisions of SPA that changes to planning schemes do not affect existing approvals, such as those committed under structure plans.

Notes on provisions

Commencement of the Bill

1 Clause 2 (Commencement)

Amendment 1 provides that the amendments to the *Sustainable Planning Act 2009* will commence on assent of the Queensland Heritage and Other Legislation Amendment Bill 2014 (the Bill).

The amendments below relate to the *Queensland Heritage Act 1992*

2 Clause 29 (Insertion of new pt 4, div 5A)

Amendment 2 amends Clause 29 of the Bill to insert the words ‘State heritage place’ for ‘State’ and correct a typographical error.

3 Clause 37 (Amendment of s 72 (Application for exemption certificate))

Amendment 3 amends Clause 37 of the Bill to insert the phrase ‘only have a minimal detrimental impact’ into sections 72(2)(b)(iv) and (3)(b). This amendment clarifies that an exemption certificate can cover work that will have no detrimental impact or will only have a minimal detrimental impact on the cultural heritage significance of the State or local heritage place for which it is issued. This aligns *Clause 37* to its original purpose, which was to expand the scope of work covered by exemption certificates to improve their operation as green tape reduction tools and provide a simple mechanism for approving certain minor development of heritage-listed property.

4 Clause 46 (Replacement of pt 8 (Interim protection orders and notices about maintaining State heritage places))

Amendment 4 amends Clause 46 of the Bill to insert an additional subsection in new section 83 providing that the matters the Minister must consider in being satisfied that a local government has appropriate procedures in place be prescribed in the regulation. These matters include policy and procedure related to: assessing whether local heritage places require essential repair and maintenance and what kind of work can be required to address these issues, how the owner of the place is consulted before a notice is issued and what alternative options are investigated, and monitoring compliance.

5 Clause 80 (Insertion of new pt 15, div 4)

Amendment 5 amends Clause 80 of the Bill to correct a typographical error in new section 199(1)(b) and its reference to section 112(1)(a).

The amendments below relate to the *Sustainable Planning Act 2009*

6 After clause 81

Amendment 6 provides for the amendment of the *Sustainable Planning Act 2009* (SPA).

Specifically, new clauses 81A to 81Q are inserted into the Bill and amend the SPA.

Clause 81A provides for the amendment of the SPA.

Clause 81B is inserted to remove subsection 88(e) of SPA to facilitate the intended outcomes regarding requirements for a planning scheme to include a local government infrastructure plan (LGIP).

Clause 81C amends section 313(2)(f) of SPA to clarify the section is only relevant if the planning scheme includes an LGIP.

Clause 81D clarifies section 314(2)(i) of SPA is only relevant if the planning scheme includes an LGIP.

Clause 81E amends the SPA to clarify that (after 30 June 2016) a local government can levy infrastructure charges or impose conditions about trunk infrastructure only if its planning scheme includes an LGIP.

Clause 81F amends the SPA to clarify the requirements for a local government to give an infrastructure charges notice.

Clause 81G amends the SPA to clarify the circumstances when additional demand may be included in the calculation of infrastructure charges.

Clause 81H replaces the words ‘details of’ with ‘information about’ an offset or refund. The amendment recognises that while infrastructure costs are not always accurate at the time of development approval, an applicant must still be provided with the best available and necessary information about an offset or refund to enable decision making, for example about negotiations or lodgement of an appeal.

Clause 81I ensures consistency of application between sections 646 and 647 of SPA. Similar to section 646, the ability to impose a condition for trunk infrastructure not identified in an LGIP is not limited to the priority infrastructure area.

Clause 81J removes an inaccuracy in how a refund is determined. The value of infrastructure provided by the applicant must be offset against the charge. The local government must refund the applicant for the value of infrastructure that is greater than the infrastructure charge.

Clause 81K amends SPA to correct an inaccuracy in how the value of an additional payment must be determined for infrastructure provided earlier than planned in the LGIP. The additional cost is limited to the additional costs incurred by the local government as a result of providing the trunk infrastructure earlier than anticipated.

Clause 81L clarifies, with regards to an LGIP; the sections are only relevant if the planning scheme includes an LGIP.

Clause 81M amends section 761A of SPA. New subsection 761A(3A) provides that the local government is taken to have complied with 761A(2)(a) or (3)(b)(ii) if the Minister is satisfied and gives notice to the local government that the amended or new planning scheme, to the extent it applies to a declared master planned area, is consistent with the strategic intent and does not materially and adversely affect development entitlements or development obligations stated in the structure plan.

This provision clarifies what it means under section 761A(2)(a) and 3(b) to incorporate a structure plan for a declared master planned area in a local government planning scheme. A structure plan may be varied or amended if consistency with the strategic intent is achieved, and also if there are no material and adverse effects development entitlements or development obligations stated in the structure plan.

Clause 81N amends section 976 of SPA by inserting new sub-section (3) to disable the application of section 976 when the new section 628A takes effect.

Clause 81O amends section 976B by inserting new sub-sections (4) to (6) to enable an infrastructure charges notice to be issued in response to an approval for a change request where infrastructure contributions for a development approval were previously imposed as part of conditions under a planning scheme policy.

Clause 81P amends section 979 of SPA to clarify that a local government infrastructure charges resolution that was in place when the amended act commenced on 4 July 2014 (an “existing resolution”), may continue to include a “saved provision” until 1 July 2015. By 1 July 2015 a new resolution must be made to replace the “existing resolution”. The new resolution may continue to include a “saved provision” until 30 June 2016.

Clause 81Q which amends Chapter 10 to insert a new Part 13, section 996, Provisions for planning schemes in effect before 4 July 2014 that do not include an LGIP or Priority Infrastructure Plan. The new section clarifies transitional arrangements regarding the requirement for a planning scheme to include an LGIP before and after 1 July 2016.

7 Long title

Amendment 7 amends the long title of the Bill to insert, after ‘1992’, ‘and the *Sustainable Planning Act 2009*’. This reflects the inclusion of minor amendments to this Act in the Bill.