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

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Deputy Premier and Minister for State Development, Infrastructure and Planning

Title of the Bill

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

Objectives of the amendments

Infrastructure charges

The Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014 (the Bill) provides for the establishment of a long-term 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 are to clarify the intention of some of the key provisions in the Bill and ensure that the processes required to levy infrastructure charges and set infrastructure conditions are practical and efficient.

Approvals bilateral

The objective of the amendments are to refine elements of the Coordinator-General assessment and approval process proposed to be conducted under new Part 4A of the *State Development and Public Works Organisation Act 1971* (SDPWO Act) to better accord with similar provisions in the *Environment Protection and Biodiversity Conservation Act 1999* (Cwth) (EPBC Act) and the intent of the proposed approvals bilateral agreement. The amendments to the Bill will enable the Coordinator-General to:

- Exercise a more discretionary power to suspend an existing approval, whereas the introduced Bill only had the option to cancel an approval;

- Reinstate cancelled or suspended approvals in appropriate circumstances; and
- Extend the definitions of the environmental history of the proponent to include reference to the environmental history of a corporation's parent company.

Amendment of local government legislation

The objective of the amendment is to amend section 96 of the *City of Brisbane Act 2010* (COBA) and section 94 of the *Local Government Act 2009* (LGA) to specify that in deciding a rating category, local governments may categorise residential land, and decide differential general rates, according to whether or not the land is the principal place of residence of its owner and to confirm that this has always been the case.

Amendment of industrial relations legislation

The proposed amendments to the *Industrial Relations Act 1999* (the IR Act) repeal the requirements for spending for political purposes. The amendments also repeal Schedule 2C of the Industrial Relations Regulation 2011 (the Regulation). The proposed transitional provision makes clear that no prosecution can be instituted or maintained, with respect to a breach of the provisions requiring the conduct of an expenditure ballot to authorise spending for political purposes, while they were in force. There are also a number of minor consequential amendments.

The effect of these amendments is that upon proclamation there is no requirement for the conduct of a ballot of members to authorise expenditure for political purposes.

A recent decision of the High Court in Unions NSW v New South Wales in December 2013, where provisions in the New South Wales *Election Funding, Expenditure and Disclosures Act 1981* were struck down, indicates that the High Court will read widely the implied right of freedom of communication on government and political matters. That decision gave the Government cause to review the balloting mechanism provided for in the IR Act, and ultimately decide to repeal the relevant provisions.

Achievement of the objectives

Infrastructure charges

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

- Remove the requirement for local governments to undertake unnecessary processes in the drafting of a local government infrastructure plan;
- Provide for an amendment to be made to an infrastructure charges notice when the timeframe for a development approval is extended;
- Clarify the definition of establishment cost, local government infrastructure plan and trunk infrastructure;
- Provide for an infrastructure charges notice to be issued when a development approval is issued by another entity;

- Ensure that a clear indication of a timeframe for a refund is included within an infrastructure charges notice and that timeframe is appealable to the Planning and Environment Court and the Building and Development Dispute Resolution Committee;
- Include transitional provisions to account for the removal of infrastructure matters for water and sewerage matters from the *Sustainable Planning Act 2009* (SPA) to the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009*;
- Require that an applicant's request for the recalculation of charges must occur prior to the timing for the original charge to be paid; and
- Clarify the intended application of some clauses of the Bill.

Amendment of industrial relations legislation

The policy objective is to be achieved by repealing relevant provisions in the IR Act and the Regulation.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the intended objectives of the amendments.

Infrastructure charges

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.

Estimated cost for government implementation

Infrastructure charges

There may be administrative and legal costs to local governments in responding to appeals made about the timeframe for refunds. However, it is not anticipated that these types of appeals will be frequent.

Approvals bilateral

The implementation of the proposed approvals bilateral agreement under the EPBC Act will introduce new legislative obligations for the State. Management of the approvals step for 'matters of national environmental significance' (MNES) under the SDPWO Act will result in additional costs to the Department of State Development, Infrastructure and Planning.

The Office of the Coordinator-General recently conducted a comprehensive review of fees and charges for services delivered under the SDPWO Act. Following the full implementation of the recommendations of that review, these additional costs will be managed by imposing a fee for each project subject to that agreement and implement further Environmental Impact Statement (EIS) process efficiencies. This fee is proposed to be prescribed in the regulation, along with other fees charged under Part 4 of the SDPWO Act as part of the approved fee reform agenda.

Amendment of local government legislation

It is not anticipated that these amendments will give rise to any implementation cost for the State Government. Similarly, these amendments support rating practices already implemented by a number of local governments in Queensland.

Amendment of industrial relations legislation

There are no costs to the Department of Justice and Attorney-General in implementing this amendment.

Consistency with fundamental legislative principles

The proposed amendments to the Bill are consistent with fundamental legislative principles, except where expressly provided below.

Amendment of local government legislation

The proposed amendments breach section 4(3)(g) of the *Legislative Standards Act 1992* in that they adversely affect rights and liberties, or impose obligations, retrospectively.

In Queensland, it is understood that approximately 19 local governments currently categorise land for differential rating purposes based upon whether the land is the principal place of residence of its owner.

The Local Government Association of Queensland (LGAQ) and the Brisbane City Council (BCC) advise that urgent retrospective amendments are required to local government legislation to address the recent decision of the Supreme Court in *Paton v Mackay Regional Council*.

In that decision, the Supreme Court found that under the current Local Government Regulation 2012, local governments are not empowered to categorise land for the purposes of levying differential general rates based upon whether the land is owner-occupied or owned by an investor. The LGAQ and BCC have requested amendments to the local government legislation to confirm that local governments are empowered to prepare residential differential rating categories based upon whether a property is owner-occupied.

The amendments achieve this policy objective but also confirm that local governments have always had this ability to categorise land based upon the owner-occupied status of the property. This has the effect of adversely affecting rights and liberties, or imposing obligations retrospectively. In particular, the amendment will have the effect of nullifying the outcome of the *Paton v Mackay Regional Council* case, which has already been decided.

It is submitted that there is sufficient justification for a departure from the requirement in section 4(3)(g) of the *Legislative Standards Act 1992*, given the significant financial impact which would be experienced by both local governments themselves and ultimately ratepayers across an entire local government area should these particular rating resolutions be invalid.

The LGAQ and local governments themselves have advised that the cost of repaying any invalid rates levied upon investor-ratepayers by local governments in Queensland would be

significant. Financial certainty is critical for local governments in preparing future budgets. Further, it is important that the effect of this amendment is the same for all local governments across Queensland so that those local governments who have already been categorising land based upon the owner-occupied nature of the property are treated equally, irrespective of any legal proceedings commenced to date by ratepayers.

Amendment of industrial relations legislation

The proposed amendments are consistent with fundamental legislative principles.

Consultation

The amendments are primarily made as a result of the report from the State Development, Infrastructure and Industry Committee (Report No. 41), which considered submissions from the community and industry.

Amendment of local government legislation

BCC and the LGAQ have requested this amendment.

Amendment of industrial relations legislation

There has been no consultation on the amendments.

Notes on Provisions

Commencement of the Bill

Amendment 1 amends clause 2 (Commencement) of the Bill to provide that other than part 3, division 2 and part 3A, the Act commences on a day to be fixed by proclamation

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

Amendment 2 amends clause 5 (Insertion of new ch 3, pt 2, div 4, sdiv 2) of the Bill to provide that a local government must follow the process stated in a guideline made by the Minister and prescribed by regulation when reviewing local government infrastructure plans (LGIPs).

The purpose of this amendment is to remove unnecessary processes and involvement of agencies. The statutory guideline for making and amending planning schemes (MALPI) will identify what entities local government must consult with in drafting an LGIP and this will be kept to a minimum.

Amendment 3 amends clause 8 (Amendment of s 347 (Conditions that cannot be imposed)) of the Bill to change the reference from 'the applicant' to 'a person'.

This amendment broadens the scope of who is encompassed by subsection 347(1)(f) to ensure the provision cannot be circumvented by imposing an infrastructure agreement onto another party to the development application.

Amendments 4 and 5 amend clause 9 (Replacement of s 478 (Appeals about particular charges for infrastructure)) of the Bill to insert a subsection which provides that the timing of a refund, which is stipulated by a local government in an infrastructure charges notice, is appealable to the Planning and Environment Court.

Amendment 6 amend clause 9 (Replacement of s 478 (Appeals about particular charges for infrastructure)) of the Bill to removes reference to the assessment manager, leaving reference to the adopted charge itself. The purpose of this amendment is to clarify that an adopted charge set by a local government is not appealable on any grounds.

Amendments 7, 8 and 9 amend clause 12 (Replacement of s 535 (Appeals about charges for infrastructure)) of the Bill. These amendments relate to the infrastructure appeals made to the Building and Development Dispute Resolution Committees and achieve the same intent as amendments 4 to 6.

Amendment 10 amends clause 13 (Replacement of section 554 (Establishing a building and development committee)) of the Bill to insert a reference to clause 554B(2)(b) rather than 554C(1). This change is necessary to reflect the consolidation of clause 554B and 554C into a single clause given its cognate nature (as proposed by amendment 13).

Amendment 11 amends clause 13 (Replacement of section 554 (Establishing a building and development committee)) of the Bill to insert a new subclause (5A) which clarifies that a written notice under subsection (5) must state:

- That a person who started the ended proceedings may commence proceedings in the court; and
- How the court proceedings may be commenced.

The purpose of this amendment is to clarify to the party who started an appeal with the Building and Development Dispute Resolution Committee the appeal rights to the court should the chief executive officer make a decision to end a proceeding.

Amendment 12 amends clause 13 (Replacement of section 554 (Establishing a building and development committee)) of the Bill to amend the clause heading of 554A to expressly state that the power to excuse irregularities is a power of the chief executive.

Amendment 13 amends clause 13 (Replacement of section 554 (Establishing a building and development committee)) of the Bill to consolidate clauses 554B and 554C into a single clause given their cognate nature and the clause heading has been amended to "power to end committee proceeding or establish new committee".

The intent of amendment 13 is exactly the same as that proposed under the original clause 554B and 554C. If the chief executive is satisfied the existing building and development committee established for a proceeding either does not have the expertise to hear or decide it, or is not able to make a decision for the proceeding, then the chief executive may suspend the proceeding and establish another committee to re-hear the proceeding, or if satisfied it is not reasonably practicable to establish another committee, decide to end the proceeding.

While every effort is taken by the chief executive to choose a suitable committee when the committee is formed, in certain limited circumstances, it may become evident after a committee has been formed that it does not have the appropriate qualifications and experience to hear the issues in dispute.

The amendments enable the chief executive to have some flexibility to change the committee membership to ensure the appropriate expertise is available to hear and decide the proceeding and ensure the confidence in the resulting decision.

Amendment 14 amends clause 14 (Insertion of new s 569A) of the Bill to insert a reference to clause 554(B)(2)(b) rather than 554C(1)(b). This change is necessary to reflect the consolidation of clause 554B and 554C into a single clause (as proposed by amendment 13).

Amendment 15 amends clause 18 (Replacement of ch 8 (Infrastructure)) of the Bill to remove 'they give' from subsection 625(2)(a).

Previously the provision did not take account of situations when a local government was not the assessment manager or concurrence agency. This amendment will mean the SPA more accurately reflects how the provisions are used in practice.

Amendment 16 amends clause 18 of the Bill (with regards to section 626) to replace the existing section heading '626 Extension of chapter to permissible changes and compliance assessment' with '626 Extension of chapter to permissible changes, extension approvals and compliance assessment'.

The purpose of this amendment is to ensure the section captures the intent of the provision to include extensions to relevant periods under sections 383 to 390.

Amendment 17 amends clause 18 of the Bill (with regards to section 626) to amend subsection (1) to provide reference to extension requests under section 383 and to clarify that compliance assessment requests are for development.

Amendments 18, 19, 20 and 21 amend clause 18 of the Bill (with regards to section 626) to insert a reference to an extension request or approval to capture the intent of the provision.

Amendment 22 amends clause 18 of the Bill (with regards to section 626) to inserts new subsection (3A) to provide that a local government may only amend an infrastructure charges notice for a relevant development approval for a change approval or an extension request if the amendment relates to the change to, or extension of, the development approval.

The purpose of this amendment is to ensure that local governments cannot seek to enforce higher charges where a permissible change has no impact on the scale of development.

Amendment 23 amends clause 18 of the Bill (with regards to section 626) to insert the definition of extension approval to mean the approval, under section 387(1), of an extension request.

Amendment 24 amends clause 18 of the Bill (with regards to section 627) to amend the definition of establishment cost for existing trunk infrastructure to be the current replacement cost of the infrastructure reflected in the relevant local government's asset register, rather than the value of the infrastructure reflected in the relevant local government's asset register. The purpose of this amendment is to clarify that the value of existing infrastructure should be the current replacement cost.

Amendment 25 amend clause 18 of the Bill (with regard to section 627) to insert a reference to financing costs in the definition of establishment cost for future infrastructure. The purpose of this amendment is to better represent the total cost of the infrastructure.

Amendment 26 amend clause 18 of the Bill (with regard to section 627) to clarify the definition of LGIPs. The purpose of the amendment is to ensure the definition of the LGIP encompasses existing and future infrastructure. The current definition has the effect that these plans are only required to show future infrastructure.

Amendments 27 and 28 amend clause 18 of the Bill (with regard to section 627) to clarify the definition of trunk infrastructure. The purpose of the amendments are to ensure that trunk infrastructure is development infrastructure identified in the LGIP, development infrastructure that, because of a conversion application, becomes trunk infrastructure and development infrastructure that is conditioned to be provided under section 647(2).

Amendment 29 amends clause 18 of the Bill to insert new provision 633A Criteria for deciding conversion application. The purpose of this amendment is to compel local governments to include in their charges resolutions a criteria for how to assess a conversion application. These criteria must be consistent with parameters provided for by the State and detailed in a Statutory Guideline.

Amendments 30 and 31 amend clause 18 of the Bill (with regard to section 635) to remove a reference to a local government that has given a development approval and replaces it with reference to a development approval that has been given and provides for an infrastructure charges notice to be issued by a local government where they are not the assessment manager or concurrence agency.

The purpose of these amendments are to extend a local governments' ability to adequately recover costs associated with infrastructure works required to accommodate the increases in demand placed on networks from development.

Amendment 32 amends clause 18 of the Bill (with regard to section 636) to set the criteria that can be considered when calculating the additional demand. The purpose of the amendment is to clarify that additional demand on trunk infrastructure must not include a lawful use that has been removed from the development site.

Amendment 33 amends clause 18 of the Bill (with regard to section 637) to provide that if an offset or refund applies, the notice must include when the refund will be given. The purpose of the amendment is to provide certainty to an applicant about the proposed timing of refunds to be paid.

Amendments 34, 35 and 36 amend clause 18 of the Bill (with regard to section 647) to replace reference to trunk infrastructure and replaces it with development infrastructure.

The purpose of the amendment is to ensure that where a local government has not identified trunk infrastructure but at assessment decides that specific infrastructure is trunk, they are able to deem it to be trunk infrastructure and condition accordingly. Amendments 35 and 36 support the application of amendment 34.

Amendments 37 and 38 amend clause 18 of the Bill to clarify that a refund is to be for all infrastructure regardless of whether that infrastructure is subject to an infrastructure charge or not. Therefore if an applicant is required to provide infrastructure on behalf of the local government, they will have the right to be fairly compensated.

The amendments clarify that the applicant is entitled to the proportion of the cost of the infrastructure which can be apportioned to other users of the infrastructure.

The amendments also remove the requirement to decide the timing of a refund in an infrastructure agreement. The timing of a refund will now be included in an infrastructure charges notice.

Amendment 39 amends clause 18 of the Bill (with regards to section 649) to clarify that the timing of payment mentioned in section 651 are for an 'additional cost condition'.

Amendment 40 amends clause 18 of the Bill to removes 654(3) so that the timing of a refund is not subject to terms agreed between the payer and local government. The timing of a refund will now be included in an infrastructure charges notice. Therefore these sections no longer fall within the definition of an 'infrastructure agreement' and are required to be removed from section 670 of the Bill.

Amendments 41 and 42 amend clause 18 of the Bill (with regards to section 657) to specify that an application for recalculating a charge must be made before the original charge becomes payable. This provides finality for the local governments on when these types of applications can be made.

Amendment 43 amends clause 18 of the Bill (with regards to section 660) to require that local governments use criteria, set out in their resolution, as the bases for making a decision on a conversion application. Open and transparent criteria on conversions will provide an even playing field for all applicants when their conversion application is being decided. This amendment was made in response to a number of submissions made to the State Development, Infrastructure and Industry Committee.

Amendment 44 amends clause 18 of the Bill (with regards to section 670) as a result of amendments to sections 654 and 649 which remove the requirement to enter into an infrastructure agreement to determine the timing of a refund.

The timing of a refund will now be included in an infrastructure charges notice. Therefore these sections no longer fall within the definition of an 'infrastructure agreement' and are required to be removed from section 670 of the Bill.

Amendment 45 amends clause 18 of the Bill (with regards to section 671) to correct a referencing error in the example that follows section 671(3).

Amendments 46 and 47 amend clause 18 of the Bill (with regards to section 673) to require that where a water distributor-retailer is a party to an infrastructure agreement and the relevant local government is not a party to that agreement; the water distributor-retailer is required to provide a copy of the infrastructure agreement to the local government.

To ensure local authorities can efficiently provide and maintain local infrastructure they need to be aware of any potential impacts that other infrastructure providers may have in their jurisdiction. This amendment provides for that transfer of information.

Amendment 48 amends clause 18 of the Bill include a new section 673A which requires that local governments reciprocate and provide all relevant infrastructure agreements to distributor-retailers.

The amendments were requested by local governments and distributor-retailers during the State Development, Infrastructure and Industry Committee's consideration of the Bill.

Amendments 49 and 50 amends clause 18 of the Bill to clarify that the section refers to a charges notice and defines a charges notice.

Amendment 51 amends clause 18 of the Bill (with regard to section 679) to provide for a local government to condition for non-trunk infrastructure where that local government does not have a Local Government Infrastructure Plan.

Amendment 52 inserts new clauses 18A, 18B and 18C into the Bill.

The purpose of the amendment is to provide transitional arrangements that allow for the deciding of the water and sewerage aspects of an existing development applications made

before the commencement, or a development application made after the commencement but which is related to an existing development approval before the commencement; to continue under the unamended SPA. This will be done through the continuation of concurrence agency powers and delegation provisions. Once there is a development approval for a material change of use of premises or reconfiguring of a lot application, the water and sewerage aspects of the development approval will become a staged connection water approval under the SEQ Water Act.

Importantly the transitional arrangements will enable those water and sewerage components of the applications just described to have access to the new infrastructure conditioning powers under *the South East Queensland Water (Distribution and Retail Restructuring) Act 2009* (SEQ Water Act). Once the specific approvals mentioned above are transferred to the SEQ Water Act, all the new infrastructure provisions, including for infrastructure charging will apply.

The amendment provides that SPA will not apply on and after the commencement to the water and sewerage aspects of reconfiguring of a lot development approvals that were in effect prior to the commencement. Rather they will transition across to the SEQ Water Act as a staged connection water approval.

The amendment will enable the water and sewerage aspects of other development approvals existing before the commencement and operational works applications received before the commencement or related to an existing development approval to continue under the unamended SPA. Operational works development approvals do not contain infrastructure components.

The amendment provides that existing compliance assessments, infrastructure agreements, land transfer agreements, and existing infrastructure charges notices continue.

Amendment 53 amends clause 19 of the Bill which updates the definition of a PIP within the SPA to read 'a priority infrastructure plan under the amended Act'.

Amendment 54 amends clause 19 of the Bill and inserts new sections 976A and 976B into the Bill.

The amendment provides that if immediately before the commencement of the amended Act, a local government has started making a priority infrastructure plan, they can continue to make the priority infrastructure plan in accordance with the unamended Act. The amendment preserves the planning work undertaken to date by local governments and supports them in transitioning to the new arrangements.

The amendment also provides that if before the commencement a development approval has been given, the unamended SPA continues to apply to the development approval as if the *Sustainable Planning (Infrastructure Charges) and other Legislation Amendment Act 2014* had not been enacted.

Without limiting subsection (2), the unamended SPA continues to apply to the following for the development approval:

- a request to change the approval
- an appeal about the approval
- the levying of charges for the development approval
- infrastructure agreements
- other infrastructure requirements relating to the approval.

The reference to the unamended SPA in this section is a reference to SPA in force before the commencement of the *Sustainable Planning (Infrastructure Charges) and other Legislation Amendment Act 2014,* section 18.

For the provision applicable for transitional provisions for th*e Water Supply Services Legislation Amendment Act 2014*, please refer to section 959E.

Amendment 55 amends clause 19 section 977 of the Bill to remove the reference to "before the commencement and as in force under the unamended Act' and insert 'under the unamended Act before or after the commencement'.

Amendment 56 amends clause 19 of the Bill and inserts 'adopted' into subsection (1)(f) of section 977 to read 'a negotiated adopted infrastructure charges notice'.

Amendment 57 amends clause 19 section 977 to provide that despite subsection (2) of section 977 and section 967B(2), if a person makes a request under section 369 (1) to change the development approval the subject of the notice the notice may be amended under the amended SPA.

Amendment 58 amends clause 19 section 977 to insert new subsections (4) and (5). Subsection (4) provides that section 657 does not apply to an infrastructure charges notice as amended under subsection (3). Subsection (5) provides that subsection (3) does not apply if the notice was given by a distributor-retailer.

Amendment 59 amends clause 19 section 979 to clarify that a charges resolution and the adopted charge within the charges resolution continues to be valid after the Act is amended.

The purpose of the amendment is to ensure it is clear that existing resolutions can continue to be used after the Act is amended thereby saving local government time that would otherwise be spent unnecessarily remaking new resolutions.

This was the intended outcome of the Bill. However, through the submissions to the State Development, Infrastructure and Industry Committee on the Bill, stakeholders requested that this intent be made clearer.

Amendment 59 also required local governments to make a new resolution which is consistent with the new provisions in the Act before 1 July 2015. This provides ample time for local governments to consider, draft and approve a new resolution and ensures the new framework is being applied consistently.

Amendment 60 amends clause 19 to require that those local governments that do not have criteria for deciding conversion applications under section 659, they must use the criteria set by the State Government in a statutory guideline.

Providing the criteria in a statutory guideline for making a decision on conversion applications is intended to assist local governments with transitioning into the new framework.

Local governments will be able to rely on the default criteria and will have the necessary time to develop their own criteria.

Amendment 61 amends clause 19 section 984 to provide that the section does not apply to development applications to which section 959B or 959C apply.

Amendment 62 amends clause 20 to omit the reference to section 554B(1)(b) or 554C(1)(a) and inserts reference to section 554B(2)(a) for the definition of building and development committee.

The amendments below relate to the amendment of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*

Amendment 63 inserts new clause 22A, to amend section 99BRAF. This clause inserts subsection (2A) to provide that subsection (2) of 99BRAF does not apply to the extent the application relates to a publically controlled place.

The intent of this section is to remove the requirement for owners consent for publicly controlled places at the time of the water connection application. This is because at the time of the application the works required or the location of the works may not be known and it is more practical to seek a public sector entities approval when these details are known i.e. at the design stage for works. This amendment does not apply to private land. Owners consent will still be required at the application stage if affected land is privately owned.

Amendment 64 amends clause 25 section 99BRAJ to remove the reference to 'the applicant' and replace it with 'a person' instead.

Amendment 65 amends clause 26 section 99BRAK to insert 'if the new infrastructure charges notice relates to the amended condition'.

Amendment 66 amends clause 29 section 99BRAU(3)(b) so that a distributor-retailer must grant the request for a standard connection if the land related to the standard connection is land other than a publicly-controlled place and the person making the request is not the owner of the land and the owner has given written to the connection. The effect of this amendment is to provide that owners consent for publically controlled places are not required at the point of application for a water approval. Approvals from owners of publicly-controlled places are obtained at a later point e.g. design stage for works. Subsection (2) amends the note.

Amendment 67 amends clause 36 section 99BRBF to provide that an appeal to the Building and Development Committee can be made about the timing of a distributor-retailer giving a refund, if the infrastructure charges notices states a refund will be given.

Amendment 68 amends clause 36 section 99BRBF to provide that an appeal cannot be about the 'the relevant charge itself'.

Amendment 69 amends clause 41 section 99BRBO to provide that an appeal to the Planning and Environment Court can be made about the timing of a distributor-retailer giving a refund, if the infrastructure charges notices states a refund will be given.

Amendment 70 amends clause 41 section 99BRBO to provide that an appeal must not be about the 'the relevant charge itself'.

Amendment 71 amends clause 45 to provide that the definition of establishment cost for existing infrastructure includes the 'current replacement cost' of the infrastructure, rather than the "value of".

Amendment 72 amends clause 45 to provide for the definition of establishment cost for future infrastructure to include the cost of financing.

Amendment 73 amends clause 45 to insert a note into section 99BRCF.

Amendment 74 amends clause 45 to insert new section 99BRCHA which provides that a board decision must include criteria for deciding a conversion application. The criteria must be consistent with parameters for the criteria provided for under a guideline mentioned in the Planning Act, section 633A(2).

Amendment 75 amends clause 45, section 99BRCJ to provide that in working out additional demand:

- any existing demand for a water service or wastewater service must not be included if it is the subject of an existing water approval for the premises
- the demand on trunk infrastructure generated by the following must not be included
    - An existing use on the premises if the use is lawful and already taking place on the premises
    - A previous use that is no longer taking place on the premises if the use was lawful at the time it was carried out
    - Other development on the premises if the development may be lawfully carried out without the need for a further development permit under the SPA.

However, the demand generated by a water approval, use or development mentioned above may be included if an infrastructure requirement that applies or applied to the water approval, use or development has not been complied with.

Charges notice means an infrastructure charges notice under the SEQ Water Act or the SPA or a notice mentioned in the SPA section 977(1).

Infrastructure requirement means a charges notice, a water approval condition of a condition of a development approval under the SPA that requires infrastructure or a payment in relation to demand on trunk infrastructure.

The effect of this section is that if infrastructure charges, condition of a water approval or condition of a development approval has not be paid or complied with the distributor-retailer

does not have to exclude the demand that would have been from previous approvals in the calculation of additional demand.

Amendment 76 amends clause 45 section 99BRCK to require the timing of a refund to be included in an infrastructure charges notice.

Amendment 77 amends clause 45 section 99BRCR(2) to provide that a distributor-retailer may impose a water approval condition that requires development infrastructure necessary to service the premises to be provided at a stated time.

Amendment 78 amends clause 45 inserts a note into section 99BRCR.

Amendment 79 amends clause 45 section 99BRCR(3) to provide that a distributor-retailer may impose a water approval condition under section 99BRCR(2) only if the infrastructure is development infrastructure that services a connection in certain detailed circumstances.

Amendment 80 amends clause 45 section 99BRCT(2) is amended to read if the cost of the infrastructure required to be provided under the condition is equal to or less than the amount worked out by applying the adopted charge to the connection the cost must be offset against that amount.

Amendment 81 amends clause 45 section 99BRCT(3) so that the reference to applying the adopted charge refers to applying the adopted charge to the connection.

Amendment 82 amends clause 45 section 99BRCT(3)(b) to provide that the distributor-retailer must refund the applicant the proportion of the establishment cost of the trunk infrastructure that may be apportioned reasonably to users of premises other than the subject premises.

Amendment 83 amends clause 45 section 99BRCY to remove subsection (3) which provided that timing of a refund is subject to terms agreed between the payer and distributor-retailers. Refund payment times are now included in an infrastructure charges notice.

Amendment 84 amends clause 45 section 99BRDC to insert a new subsection (2A) which provides that a notice under subsection (2) of section 99BRDC must be given to the distributor-retailer before the levied charge under the infrastructure charges notice becomes payable under section 99BRCL.

Amendment 85 amends clause 45 section 99BRDF replaces subsection (2) to now provide that in deciding the conversion application, the distributor-retailer must have regard to the criteria for deciding the application in its infrastructure charges schedule.

Amendment 86 amends clause 45, section 99BRDK. The definition of a water infrastructure agreement has been updated to remove the reference to sections 99BRCT(4) and 99BRCY(3).

Amendment 87 amends clause 45 to insert new section 99BRDMA. Section 99BRDMA applies if a participating local government is not a party to a water infrastructure agreement that relates to its local government area. The distributor-retailer must give the local government a copy of the agreement.

Amendment 88 inserts new clause 47A which provides for new sections 132 to 135.

New section 132 applies to a development application mentioned in the SPA, section 959B(1)(existing development applications) or 959C(1)(related applications) and a development approval mentioned in the SPA section 959E(1) or (2)(other development approvals). A delegation under former section 53(5)(a)(i), or a sub-delegation under former section 53(6), continues to apply to the development application or development approval, as if the *Water Supply Services Legislation Amendment Act 2014* had not been enacted.

Also a delegation under former section 53(5)(d) or a sub-delegation under former section 53(6), continues to apply to the development in section 959E(1) or (2) (other development approvals) as if the *Water Supply Services Legislation Amendment Act 2014* had not been enacted.

Former section 53(6) to(10) continues to apply to a delegation mentioned in subsection (2) or (3).

The intention of this provision is to continue for the specified matters the mandatory delegation of concurrence powers for water or sewerage aspects of development applications and the optional delegation of functions under the *Water Supply (Safety and Reliability) Act 2008* for approving connections for the above identified matters.

New section 133 applies if a compliance assessment (an *existing assessment*) mentioned in the SPA, section 959F was, or is, required. A delegation under former section 53(5)(a)(ii) or (5)(d), or a sub-delegation under former section 53(6), continues to apply to the existing assessment as if the *Water Supply Services Legislation Amendment Act 2014* had not been enacted. Former section 53(6) to (10) continues to apply to a development mentioned in subsection (2).

The intent of this section is to provide for the continuation of the mandatory delegation of distributor-retailers compliance role for an assessment that was required prior to the commencement.

New section 134 provides that a distributor-retailer may delegate its functions under the SPA former chapter 9, part 7A, division 5 to its relevant participating local governments. Former section 53(6) to (10) is taken to apply to a delegation made under subsection (1).

New section 135 applies to the following development approval if the approval involves a water connection aspect:

- a development approval that takes effect under the SPA, section 959B or 959C if the approval is for a material change of use of premises or reconfiguring a lot under the SPA
- a staged development approval to which the SPA section 959D applies.

The water connection aspect of the development approval is taken to be a staged connection water approval. All conditions of the development approval relating to the water connection aspect are taken to be conditions of the water approval.

The intent of this section is to transfer the water and sewerage aspects of development approvals given under section 959B or 959C for a material change of use of premises or reconfiguring a lot to be a staged connection water approval. Additionally, this section transfers staged development approvals under section 959D to a staged connection water approval. Should any further approvals be required for the transferred matters these are to be completed as part of a staged connection water approval under the SEQ Water Act. SPA will no longer apply.

Amendment 89 amends clause 48 to insert new sections 140B to 140F.

New section 140B inserts definitions for the commencement, concurrence agency, development approval and the unamended Planning Act.

New section 140C applies to a development application to which the SPA, section 959B or 959C applies if the application is for a material change of use or premises or reconfiguring a lot under the SPA. Despite the SPA, section 959B(3) and 959C(3), for the aspect of the application for which a distributor-retailer or its participating local government is a concurrence agency

- Chapter 8, section 347(1)(b) and chapter 9, part 7A, division 5 of the unamended SPA do not apply for deciding the application
- Section 99BRAJ(2)(h),(3),(4) and chapter 4C, part 7, divisions 4 and 6 of the SEQ Water Act apply for deciding the application
    - As if a reference to an application for a water approval were a reference to a development application
    - As if a reference to an applicant for a water approval were a reference to an applicant for a development approval
    - As if a reference to a water approval were a reference to a development approval
    - As if a reference to water approval condition were a reference to a development approval condition.
    - As if a reference to a distributor-retailer were a reference to the concurrence agency for the development application
    - With any necessary changes.

The distributor-retailer or its participating local government may under chapter 4C, part 7 impose on any development approval given for the development application a condition about infrastructure for the distributor-retailer's water service or wastewater service as if the development approval were a water approval. To remove any doubt, it is declared that if a condition is imposed on a development approval under subsection (3), the condition is a condition of the development approval.

The intent of this section is to provide that undecided applications before the commencement for a material change of use of premises or a reconfiguration of a lot; and related application (material change of use of premises or reconfiguration of a lot) for existing development approvals before the commencement have access to the new infrastructure framework. This is consistent with the policy for local governments under SPA. As a result when a local government applies a condition to an undecided development application or a related application the local government will do this using the new provisions of the SEQ Water Act and not under the SPA. The local government has been delegated the concurrence powers of

the distributor-retailer and is applying conditions to the development approval in this role. However the conditions that are to be applied are those under the SEQ Water Act.

New section 140D applies if a notice (an *original notice*) to which the SPA, section 959G, applies is given for a development approval to which the SPA, section 959E applies and a person makes a request under the SPA, section 369(1) to change the development approval.

Despite sections 959E(3) and 959G(2), an infrastructure charges notice may be given under the SEQ Water Act, chapter 4C, part 7, division 2, subdivision 3 to replace the original notice as if the original notice were an infrastructure charges notice under the SEQ Water Act and a reference to a water approval were a reference to a development approval. However, section 99BRDC does not apply to an infrastructure charges notice given above.

New section 140E applies if a water connection aspect of a development approval is taken to be a water approval under section 135. For section 99BRCI, a reference in that section to a decision notice is taken to be a reference to the decision notice for the development approval under the SPA.

A distributor-retailer cannot levy a charge under section 99BRCI for the supply of trunk infrastructure for the water connection aspect if a charge was levied under the SPA for the supply of trunk infrastructure before the water connection aspect was taken to be a water approval.

However, this section does not limit a distributor-retailer from levying a charge under section 99BRCI for the supply of additional or related trunk infrastructure if a subsequent water approval takes effect under the SEQ Water Act.

New section 140F applies if before the commencement a State Planning Regulatory Provision under the SPA provided for the supply of trunk infrastructure and the distributor-retailer board adopted a charge (an *existing charge*) for the supply of trunk infrastructure under the unamended SPA, section 755k. Further if the relevant distributor-retailer has not adopted an infrastructure charges schedule under section 99BRCE.

Despite section 99BRCF(1), the adopted charge for providing the trunk infrastructure is the existing charge for the infrastructure and is taken to have had effect on the day it had effect under the unamended SPA. However, an existing charge is of no effect to the extent it is inconsistent with the SPRP (adopted charges). If a decision (an *existing board decision*) of the distributor-retailer's board under the unamended SPA, section 755KA does not include a method for working out the cost of infrastructure the subject of an offset or refund then the decision is taken to include a method as sect out in a guideline mentioned in the SPA section 973(3).

If the existing board decision does not include criteria for deciding a conversion application, the existing board decision is taken to include criteria as set out in a guideline mentioned in the SPA, section 979(3A).

Amendment 90 amends clause 49 (Amendment of schedule (Dictionary)) to add a note following the definition of adopted charge to refer to section 140F 'Adopted infrastructure charges at commencement continue in effect'.

Amendment 91 amends clause 49 (Amendment of schedule (Dictionary)) to amend the definition of trunk infrastructure to include development infrastructure that is required to be provided under a condition imposed under section 99BRCR(2).

The amendments below relate to the amendment of the *State Development and Public Works Organisation Act 1971*

Amendment 92 amends clause 52 (Insertion of new pt 4A) of the Bill so that the definition of environmental record in the definitions for Part 4A align more closely with section 136(4) of the EPBC Act. In particular, the amendment would allow for consideration of the environmental record of parent companies. This is used as part of the consideration of an environmental approval and conditions.

Amendment 93 inserts the new definition for a 'reinstatement request' used when the Coordinator-General reinstates approvals that have been suspended or cancelled.

Amendment 94 inserts an additional consideration for the Coordinator-General when deciding whether to issue an environmental approval under section 54W to include information, advice or comment given under section 54S(6).

Amendment 95 corrects an error in cross reference to section 54ZC(2) that should reference 54ZC(3).

Amendment 96 provides for the Coordinator-General to suspend and reinstate an environmental approval, in order to align with sections 144 and 145 of the EPBC Act.

While Division 5 of the Bill provides the power to cancel an existing approval, there was no mechanism to reinstate an approval without making a fresh application and progressing through the assessment and approval process.

The cancellation of an approval is a 'last resort' step in the range of potential enforcement actions. A mechanism to temporarily suspend an approval provides an intermediate enforcement option that may sometimes be more effective and appropriate to the project circumstances.

A suspension period would be stated upfront, so that a proponent can make submissions about the suspension, including the proposed period of the suspension. However, when the Coordinator-General gives the notice under section 54ZI, that is when the period of the suspension is finally determined. The notice may state an implied period (i.e. from the date the notice is given) to the date when the proponent does a particular thing.

Amendment 97 amends section 54ZL to correspond with offences relating to environmental harm in the *Environmental Protection Act 1994*.

Amendment 98 amends section 157A to include a condition for environmental approval to the existing definition of what is an enforceable condition. This amendment also amends section 157P(5) to omit the definition of executive officer as that definition is now moved to the dictionary (by amendment 101).

Amendment 99 corrects clause 55 (Amendment of sch 2 (Dictionary)) by adding the definition of 'executive officer' in the Dictionary.

Amendment 100 amends clause 55 (Amendment of sch 2 (Dictionary)) to include a reference to the relevant section where 'reinstatement request' is defined.

The amendment below relates to the amendment of the *City of Brisbane Act 2010* and the *Local Government Act 2009*

Amendment 101 includes new amendments to section 96 of the *City of Brisbane Act 2010* (CoBA) and section 94 of the *Local Government Act 2009* (LGA) which require local governments to levy general rates on all rateable land in the local government area.

Pursuant to the LGA, the CoBA, the *City of Brisbane Regulation 2012* and the *Local Government Regulation 2012*, local governments have the power to levy general rates that provide for different categories of rateable land. However, the legislation does not currently expressly specify that land may be categorised according to whether or not the land is the principal place of residence of its owner. Several local governments currently categorise land on this basis.

The proposed amendment to section 96 of the CoBA and section 94 of the LGA will confirm that residential land may be categorised according to whether or not the land is the principal place of residence of its owner and confirm that this has always been the case. The proposed amendments will provide certainty to local governments who are currently preparing their budgets for the 2014/2015 financial year.

The amendment below relates to the amendment of the *Industrial Relations Act 1999*

Amendment 102 amends the *Industrial Relations Act 1999* to repeal provisions setting out requirements for spending for political purposes. Schedule 2C of the Industrial Relations Regulation 2011 which sets the rule for the conduct of an expenditure ballot is also repealed by amendment 102.

A proposed transitional provision in amendment 102 makes clear that no prosecution can be instituted or maintained during the time the provisions were in force.

Amendment 102 also makes a number of consequential amendments.

Long title of the Bill

Amendment 103 amends the long title of the Bill to reflect the proposed amendments to be moved during consideration in detail.