

Local government infrastructure framework

Infrastructure agreement principles

FACT SHEET
MARCH 2017

Purpose

This fact sheet provides advice on the considerations and principles to be taken into account in the preparation and execution of infrastructure agreements (IA).

Background

Section 670 of the *Sustainable Planning Act 2009* (SPA) provides the basis for which IAs are negotiated and prepared. IAs should be prepared consistent with the intent and requirements of the infrastructure planning and charges framework under SPA.

Infrastructure agreements

Role

IAs can play an important role in securing further certainty or clarity regarding stakeholder obligations for infrastructure provision or payment of infrastructure charges. An IA takes precedence over any relevant infrastructure charges notice (ICN) or development approval condition and should be carefully considered and negotiated to ensure the rights of all involved parties are respected.

Application

An IA may be requested in writing by a local government, public sector entity, distributor-retailer or an applicant involved with a development application. They can be used to facilitate outcomes on infrastructure matters which may not be appropriately resolved through development approval conditions and ICNs, or may be more appropriately dealt with as an IA.

Examples of where an IA may be appropriate to pursue include:

- extending/altering the detail or terms identified in an ICN, for example:
 - altering the timing for payment of an infrastructure charge
 - altering the timing for provision of infrastructure
 - formalising a processes to deal with multi-staged developments in relation to the carrying forward of offsets and refunds, etc.
 - clarifying the obligations of all involved parties in relation to delivery of trunk infrastructure
- providing further detail surrounding the timing for payment of an additional payment condition in relation to trunk infrastructure
- entering into one or more infrastructure partnerships that relate to the provision of infrastructure that does not form part of a condition on a development.



Obligations for IAs

All parties are required by SPA to act in good faith when negotiating an IA.

Additional obligations for a local government, distributor-retailer or public sector entity include:

- A distributor-retailer or public sector entity must provide a copy of an IA to the local government for the area the agreement applies, if the local government is not a party.
- A local government must provide a copy of an IA to the distributor-retailer where the agreement relates to a water approval or application for a water approval, if the distributor-retailer is not a party.

Key principles

IAs are voluntary for all parties involved and the following key principles should underpin the preparation and negotiation of an IA:

- An IA should reflect the processes and content for ICNs and provide more detail in respect of:
 - timing of or triggers for payment of charges
 - cost of the infrastructure
 - accumulation of credits over multiple stages (i.e. linking ICNs of staged approvals)
 - scope and timing of refunds
 - triggers for certain actions to be performed or material to be provided
 - procurement and reporting processes for construction of infrastructure.
- All parties should undertake negotiations in a timely manner to facilitate infrastructure outcomes and avoid delays to the development assessment process.
- All parties are to negotiate the terms of an agreement in good faith, ensuring the timely provision of necessary information and responses to the other party.
- An IA should be consistent with existing processes and requirements under the legislation with respect to:
 - Levied charges – charges must not exceed the maximum adopted charge.
 - Calculation of infrastructure values – based on actual costs of delivering infrastructure using the same processes included in the relevant charges resolution and/or as per the parameters set out under SPA.
 - Application of offsets across all relevant networks – offsets are able to be used against the full levied charge imposed by the relevant infrastructure authority (i.e. a local government or distributor-retailer).
 - Conversion rights – the ability to pursue this outcome should remain available to an applicant consistent with the provisions of SPA.
 - Refund provisions – to be provided in a reasonable timeframe following completion of all stages of the development, having consideration of the development's consistency with the efficient and orderly sequencing of infrastructure.
 - Relevance and reasonableness to the development application.
- Achieving certainty and clarity of obligations and responsibilities for all parties involved under the agreement. This is paramount for a successful negotiation process and ensures the effective implementation and ongoing management of the document.

Content of an IA

Under the legislation, an IA must:

- clarify how obligations are to be fulfilled under the agreement, where issues may arise from a change of ownership of the land [s672(1)(a)]; and
- clarify how the parties will manage changes to a planning instrument that may affect development entitlements [s672(1)(b)].

An IA should:

- mirror the intentions of the development approval conditions with the aim of providing further clarity around the processes and timeframes for delivering infrastructure
- provide clear, itemised schedules of infrastructure obligations that are supported by legible plans
- provide the specific details of the infrastructure item, outline the parties responsible for its delivery and the timeframe in which it is to be delivered
- provide clarity around calculation and use of offsets and timing of refunds.

Distributor-retailers

Infrastructure conditioning for water infrastructure within a water distributor-retailer area is regulated by the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009*. For further information on infrastructure charges or planning for distributor-retailers please visit the Department of Energy and Water Supply website dews.qld.gov.au.

More information

For more information on local government infrastructure charges and planning matters, please visit the Department of Infrastructure, Local Government and Planning website dilgp.qld.gov.au.