

LOCAL GOVERNMENT (PLANNING AND ENVIRONMENT) ACT AMENDMENT BILL 1995

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The desired outcomes of the Bill are to make clear the power of the State Government, a government owned corporation and a local government to enter into, make and amend infrastructure agreements in respect of master-planned urban communities.

The objective of this Bill is to ensure large-scale, master-planned urban communities are provided with the necessary State, regional and local infrastructure and services in a timely manner. Planning for these types of developments will be facilitated by way of a development control plan which must be prepared specifically for the development. The associated infrastructure agreements will set out how and when the infrastructure and facilities necessary to service the needs of the community will be delivered.

The combination of a planning instrument to guide the quality of development with an infrastructure agreement to service the development is needed to achieve effective, integrated, long-term urban planning. The Local Government (Planning and Environment) Act at present does not provide for linking of an infrastructure programme with the staged development of large scale urban communities. This has in the past necessitated the Parliament having to pass project specific special legislation to ensure the roll out of infrastructure coincided with the progressive development of these new areas.

The Bill provides that agreements entered into between individuals, companies, the State and local government to provide infrastructure for urban development generally attach to the land and bind successors in title.

This provides security for the financiers who finance these long-term undertakings, and ensures people who take up residence in these master-planned communities have the necessary services in place from day one. The Bill includes public notification requirements of the infrastructure agreement using the existing Local Government (Planning and Environment) Act mechanisms of a town planning certificate and public inspection rights at the office of the relevant local government. The Bill recognises the Social Infrastructure Agreement made in November 1994 and the Transport Infrastructure Agreement to be made in respect of the Springfield development.

The infrastructure agreement associated with the development control plan as provided for in this Bill is distinct from the water, sewerage and parks contributions obtained by Councils upon the approval of a development application for rezoning, consent or subdivision. The provisions of the Bill will not apply to these types of development applications.

Estimated cost for Government Implementation

There are no additional costs incurred by the Government. The costs associated with the preparation and implementation of an agreement will be borne by the parties to the agreement in accordance with normal practice.

Fundamental Legislative Principles

The provisions of the Bill are consistent with the fundamental legislative principles provided for in the Legislative Standards Act.

Consultation

Key agencies involved in the formulation and implementation of infrastructure agreements have been consulted at several stages during the development of the Bill. In particular, the Local Government Association of Qld, State Government agencies and the Urban Development Institute of Australia (Qld) have been consulted.

NOTES ON PROVISIONS

Clause 1 sets out the short title of the Act.

Clause 2 provides for an amendment to the *Local Government (Planning and Environment) Act 1990*.

Clause 3, subclause 1 provides that a limited town planning certificate must indicate whether there are obligations under an infrastructure agreement that have not been fulfilled, and if there are, that the obligations may attach to the premises.

Clause 3, subclause 2 provides that a full town planning certificate must include details of any obligations under an infrastructure agreement that have not been fulfilled.

Clause 3, subclause 3 provides that if obligations under an infrastructure agreement have been fulfilled, a town planning certificate need not mention the existence of the infrastructure agreement.

Clause 4 provides the power to a local authority to seal a plan of survey after it is satisfied that obligations under an infrastructure agreement have been fulfilled; or do not apply to the plan of survey having regard to the development control plan and the infrastructure agreement.

Clause 5 omits the heading of Part 6 of the Local Government (Planning and Environment) Act and inserts a new heading in its place.

Clause 6 provides that the matters set out in section 6.1(1) and section 6.1(2) of the Local Government (Planning and Environment) Act do not apply to an infrastructure agreement.

Clause 7 provides for a new division 2 entitled ‘Infrastructure agreements’ after section 6.4 Part 6 of the Local Government (Planning and Environment) Act.

Section 6.5 provides definitions of the terms ‘consent documents’, ‘infrastructure’, ‘infrastructure agreement’, and ‘State’.

Section 6.6 provides that an agreement is not an ‘infrastructure agreement’ under this division unless it contains the following elements—

- that the agreement must be about infrastructure for the development of land included in a development control plan;

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- that the State, a government owned corporation or a local government must be a party to the agreement;
- the content of an agreement must include arrangements for the repayment of amounts paid and reimbursement of amounts expended; the amendment or cancellation of obligations where development entitlements on which the obligations are based are changed without the agreement of the person who has to fulfil the obligations; how the obligations are to be fulfilled if there is one or more changes of ownership of land the subject of the agreement; and provides that a regulation may prescribe additional matters to be included in an agreement.

The term ‘infrastructure agreement’ includes the original agreement and any amendments to it.

Section 6.7 confirms the State, a government owned corporation or a local government has, and always did have, power to make or amend an infrastructure agreement.

Section 6.8 provides that where a local government is a party to an agreement, a local government must take into consideration the provisions of an infrastructure agreement in exercising a discretion had by it; that an infrastructure agreement is not invalid if it has the effect of limiting the exercise of such a discretion; and that the limitation of the discretion must be given effect.

Section 6.9 provides that where the State or a government owned corporation is a party to an infrastructure agreement it must give a copy of the agreement to the local government as soon as practicable after it is made.

Section 6.10 provides—

- if the owner of land is a party to an infrastructure agreement that development obligations attach to the land and bind the owner and successors in title;
- if the owner is not a party to an agreement the owner’s consent is required before the obligations attach to the land and bind successors in title;
- that the owner must give a copy of the consent document to the local government.

The term ‘development obligations’ does not include obligations of the State, a government owned corporation or local government.

Section 6.11 provides that none of the previous provisions of this division have retrospective effect in respect of an infrastructure agreement made before the commencement of this division. However the previous provisions of this division do apply to agreements made with respect to the Springfield agreement made on 29 November 1994 and the Springfield agreement to be made in November or December 1995 (except the provisions of section 6.6(4) relating to the content of the agreement).

Section 6.12 provides that where a local government is a party to an agreement, or has been given a copy of an agreement or a consent document, the local government must keep infrastructure agreements open to inspection at the office of the local government and make copies available for purchase at its public office.

Section 6.13. The intention of this section is that existing agreements for infrastructure are not unlawful merely because they do not contain the elements mentioned in the Bill. However, because they do not contain those elements, they are not regarded as infrastructure agreements within the meaning of the Bill.