kelledy jones
LAWYERS

LG Alert

Planning, Development and Infrastructure Bill 2015 – Frequently Asked Questions

Over the past 6 weeks, KelledyJones Lawyers has delivered Seminar One of our Planning Reform Seminar Series to hundreds of council officers, elected members and Development Assessment Panel members. As part of our continuing efforts to ensure that councils are informed of the content of the Bill, and are prepared for its implications, we have collated a series of frequently asked questions and our answers which are set out below.

Q. What is an environment and food production area?

A. An environment and food production area is effectively a tool to create urban growth boundaries within Greater Adelaide. The Minister may declare an area within Greater Adelaide to be an environment and food production area on the criteria in clause 7(2) of the Bill. The criteria are said to be designed to prevent the loss of significant rural, landscape, environmental and food production areas. Once a declaration is made, the division of land which creates one or more additional allotments to be used for residential development is prohibited. "Residential development" is defined to mean:

"*…development primarily for residential purposes but does not include—*

(a) the use of land for the purposes of a hotel or motel or to provide any other form of temporary residential accommodation for valuable consideration;

(b) a dwelling for residential purposes on land uses primarily for primary production purposes".

Q. Can the Minister of the day simply vary or abolish an environment and food production area themselves?

A. No. Before an environment and food production area is varied or abolished, the Minister must provide notice and a report to both Houses of Parliament, and the variation or abolition will not take effect unless approved by a resolution passed by both Houses of Parliament.

Q. Will councils be compelled to enter into planning agreements with the Minister so that planning policy and assessment functions will be the responsibility of a joint planning board and the board-appointed assessment panel?

A. No. The decision to enter into a planning agreement with the Minister under clause 35 is a discretionary decision.

Q. When will public consultation under the Community Engagement Charter be required?

A. Public consultation under the Charter will be required:

1. whenever a state planning policy, regional plan, the Planning and Design Code or a design standard is created or amended (clause 69);

2. whenever a place is proposed to be included in the Planning and Design Code as a place of local heritage value and whenever an amendment to the Code is being proposed which will subject a place to any heritage character or preservation policy that is similar in intent or effect to a local heritage listing (clause 63(3)); and

3. before an essential infrastructure delivery scheme is adopted by the Minister (clause 157(1)).

It is possible that the Regulations could require adherence with the Charter for further matters (clause 3 of Schedule 5 of the Bill).

The Charter does not apply to public consultation on development applications. Nor does it apply to complying changes to the Planning and Design Code under clause 71 or to Minor or operational amendments to the state planning policy, regional plan, the Planning and Design Code or a design standard under clause 72.

Q. How much local variation to accommodate for special places and localities will be allowed for within the Planning and Design Code?

A. This is not yet clear, and will not be known until the Code is drafted. However the framework for local variation does exist in the Bill. What we do know is that the Code will contain zones, subzones and overlays (see clause 62 of the Bill).

Zones are intended to govern the use and development of an area, subzones are intended to set out additional policies and rules relating to the character of a particular part of a zone and overlays are intended to address specified or defined issues that may apply in any zone or subzone and can apply across different zones or subzones (i.e. in a manner similar to bushfire protection overlays).

Provision is made for the Planning and Design Code to include provisions that provide for the adaptation or modification of the rules that apply in a particular zone or subzone. These variations include variations to technical or numerical requirements, variation of subzone provisions to recognise unique character attributes and the adoption of options for development that are additional to those provided in a zone, subzone or overlay (clause 62(4)).

Q. How will the SA planning portal work?

A. The finer detail of the planning portal will not be known until Regulations are drafted and the portal itself is developed and established. The Bill however does set out a framework for the scope and operation of the portal:

1. the portal is intended to include a considerable amount of information relevant to the planning system, including but not limited to, state planning policies, the Planning and Design Code and other documents (clauses 46(2) and 47);

2. current and historical documents must be maintained in the portal as far as is practicable (clause 46(3));

3. an online atlas containing zoning maps must be contained within the portal – presumably to assist members of the community to quickly identify which zones, subzones etc apply to their property;

4. standards and specifications for uploading files, certifying documents and other relevant matters will be prepared and published by the State Planning Commission;

5. neither the *State Records Act 1997*, nor the *Freedom of Information Act 1991* apply to records held on the portal.

   In terms of the SR Act, this means that the disposal of documents on the portal can be governed by the State Planning Commission (see clauses 49(2)(e) and 49(6)).

   In terms of the FOI Act, this means that the only planning and development documents which will be able to be obtained by the public are those which are publicly-accessible on the portal;

6. provision is made for Regulations to govern:

   - the lodging of applications on the portal;
   - the assessment of categories of development on the portal;
   - the issuing or registration of development authorisations; and
   - the provision or publication of information (clause 51).

Q. Will councils be involved in the assessment of restricted developments?

A. No provision exists for this to occur. Clause 103 does not require that a council concur in the granting of a planning consent to a restricted development – this is in contrast to the concurrence requirements for non-complying developments in section 35 of the *Development Act 1993.* It may be possible for a council to be a referral body for a restricted development, however this will require Regulations to be enacted under clause 115 of the Bill.

We note that the Bill has not yet progressed to debate in the House of Assembly. The Bill is listed in the weekly notice paper for the House for the week commencing 27 October. We will continue to keep you informed of the progress of the Bill, any matters relevant to the Bill and of future seminars as the Bill is implemented.

If you have any questions please contact Victoria Shute on 8113 7104, vshute@kelledyjones.com.au; Tracy Riddle on 8113 7106, triddle@kelledyjones.com.au; Philippa Metljak on 8113 7112, pmetljak@kelledyjones.com.au; or Chelsea Lucas on 8113 7111 or clucas@kelledyjones.com.au