

PDI Bill Update

New infrastructure scheme proposed

Debate on the Planning, Development and Infrastructure Bill 2015 ("the PDI Bill") has resumed in earnest in the Legislative Council after the summer break.

During the break the Government engaged with a number of interest groups, including the Property Council of Australia ("the Property Council") and the Urban Development Institute of Australia ("the UDIA"), which entities have a particular interest in the clauses relating to the proposed essential infrastructure delivery scheme. These scheme provisions have the potential to greatly impact the administration and overall budgets of councils.

Whilst the precise detail of any proposed amendment to the Bill cannot be known until such time as it is debated in Parliament, we have received an indication of what is proposed by the Property Council and the UDIA. Relevant details are set out below.

"The essential infrastructure delivery scheme has the potential to greatly impact the administration and overall budgets of councils"

The Currently Proposed Scheme

The basic framework for the essential infrastructure delivery scheme proposed in the PDI Bill, as passed by the House of Assembly late last year, is as follows:

- one broad scheme initiated by the Minister (or at the request of another person or body) for the provision of all essential infrastructure (and the undertaking of any related development);
- essential infrastructure presently has a broad definition which includes educational facilities and emergency services facilities, as well as infrastructure which is traditionally

required for land divisions, such as roads and reserves;

- the Minister must take "reasonable steps" to consult with the council and the owners of any land that will be directly affected;
- the CE of the Department will appoint a scheme coordinator who is ultimately responsible for administering the scheme and ensuring that the infrastructure proposed in the scheme is delivered;
- funding arrangements for contributions may be attributed over the lifetime of the relevant infrastructure, or be based on contributions that become payable on a specified event;
- contributions should be limited to recovering the reasonable capital costs of the scheme, based on infrastructure that is not produced or delivered at an "unreasonable" cost price;
- councils may be responsible to make a contribution based on an amount specified by the Minister each financial year;
- in order to reimburse itself for an amount contributed (or to be contributed) a council must impose a charge on rateable land in the contribution area;
- the "charge" as it is called in the PDI Bill has the status of a separate rate under Chapter 10 of the *Local Government Act 1999* ("the LG Act");
- a number of provisions of Part 10 of the LG Act are modified in the PDI Bill which include (amongst other things) that the charge can be imposed at any time of year and without public consultation being required.

The Property Council and the UDIA Model

The Property Council and the UDIA have presented a joint position to Government on a proposed model for an infrastructure scheme, one which makes a distinction between different types of infrastructure:

Scheme 1

- is a basic infrastructure scheme that covers core infrastructure needs such as roads, storm water, gas and electricity; and
- is proposed to be funded by the area serviced by the core infrastructure.

Developers will be subject to an indexed charge on the land and will pay this charge when the land has been developed.

Scheme 2

- is a broader scheme that covers a wider range of infrastructure such as parks, light rail, railway stations etc;
- proposed to be funded through rates recovered by council which will then be paid to Government; and
- the scheme is an “opt in” model. That is, property owners must agree to the charge on their land, with a 100% agreement threshold for a scheme to be set up under the provisions or, in the case of 75% of affected property owners agreeing, the infrastructure agreement is to be placed before Parliament for approval.

The Mount Barker, Littlehampton and Nairne Strategic Infrastructure Plan

The model proposed by the Property Council and the UDIA is not too dissimilar to that which has been implemented by the Mount Barker District Council in the development of Mount Barker, Littlehampton and Nairne.

In the development of those areas, an Infrastructure Deed was in many instances agreed between the Minister for Transport and Infrastructure and the developers. The total cost of infrastructure was \$161.8 million and was divided as follows:

- \$61.3 million funded by a \$50,000 per hectare developer payment (payable on subdivision of land within the Mount Barker growth area);
- \$33.9 million direct from developers of land within the growth area;
- \$58 million from the State and/or Commonwealth Governments;
- \$8.6 million funded by the Council.

In addition to the above contributions, the District Council of Mount Barker also introduced a separate rate, which applied to land owned by developers which were not party to the original Infrastructure Deed, to ensure that all developers

of land in the relevant area contributed infrastructure or a developer payment.

“purchases may still...find themselves locked in to a position whereby the council is required to levy an on-going charge on the land to fund certain infrastructure in respect of which they have had no say.”

What would the Property Council and the UDIA Model mean for councils?

While the precise detail of the proposed model for the amended infrastructure delivery scheme will not be clear until such time as it is introduced in Parliament and debated or if, indeed, it will even be adopted, the approach taken by the District Council of Mount Barker in the provision of infrastructure for the regions of Mount Barker, Littlehampton and Nairne provides an indication of how the new model may operate administratively.

Whilst the proposal for the provision of core infrastructure appears to bring clarity to the development of certain infrastructure and the requirements of developers to fund it, it is less clear what the role of the council is proposed to be for the purposes of the broader infrastructure scheme.

Under this model, if the “property owners” at the time the scheme is proposed are the developers who obtain approval for the division of land requiring new infrastructure, then in-coming purchasers may still find themselves locked in to a position whereby the council is required to levy an on-going charge on the land to fund certain infrastructure in respect of which they have had no say.

If you have any questions please contact Tracy Riddle on 8113 7106, triddle@kellyjones.com.au; Victoria Shute on 8113 7104, vshute@kellyjones.com.au; or Michael Ashforth on 8113 7110, ashforth@kellyjones.com.au