How To – Prepare an Infrastructure Agreement

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Purpose

To provide an overview of:

- Infrastructure agreements under the *Sustainable Planning Act 2009* (SPA)
- Circumstances in which Council or a developer might enter into an infrastructure agreement
- The general structure of a typical infrastructure agreement
What is an infrastructure agreement?

An infrastructure agreement (IA) is a written agreement between a developer and a public sector entity about:

- the supply or funding of infrastructure;
- Payment and refund mechanisms towards the cost of supplying or funding trunk infrastructure;

An Infrastructure Agreement:

- Establishes the obligations of each party;
- Provides the timing of the Agreement; and
- Identifies the Schedule of Works

There are local and state infrastructure agreements.
Infrastructure Agreements under SPA

- Section 637 of SPA provides that an agreement between local government and a developer can be made as an alternative to paying infrastructure charges levied through any other infrastructure charging instrument (i.e. Council’s Adopted Infrastructure Charges Resolution).

- Section 660 – 665 defines the term *infrastructure agreement* and includes matters about the content and general legal matters about infrastructure agreements.
In accordance with Section 665 of the SPA, to the extent an infrastructure agreement is inconsistent with a development approval, master plan or compliance permit, the agreement prevails.

Further, an agreement overrides any type of infrastructure charges notice where there is an inconsistency.
Advantages of Infrastructure Agreements

- Can provide a level of certainty about the extent of works to be provided and money to be paid in advance of applying for a development approval.
- Can provide for refunds, crediting or off set where a developer is going to incur the whole cost of constructing a major infrastructure item which benefits a wider area.
- Can provide for infrastructure charges to be collected for such items which are refunded to the developer over time.
- Can vary the timing of the payment of the infrastructure contribution.
Entering into an IA

Council may consider entering into an IA in certain situations, for example:

- to vary the amount or the form of payment of an infrastructure contribution (e.g. to allow the applicant to supply works or land in lieu of part or all of the contribution);

- to vary the timing of the payment of the infrastructure contribution (e.g. Deferment or staged development);

- to provide the terms on which a refund would be provided where infrastructure that benefits a wider area is provided ahead of time.
Scenario

- A large master planned residential area is proposed on land where the planning scheme only contemplates such development in 2022 in accordance with the PIP.

- Wider Road needs to be upgraded to adequately service the development and the upgrade is a condition of approval.

- An IA between Council and the developer can provide for the infrastructure to be ‘brought forward’ at the developer’s cost and provide a mechanism for refunds to the developer when other land is developed which will benefit from the network.

<table>
<thead>
<tr>
<th>Identification</th>
<th>Map reference</th>
<th>Future trunk infrastructure</th>
<th>Planned date of completion</th>
<th>Establishment cost</th>
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</thead>
<tbody>
<tr>
<td>Wider Road, Beaudesert</td>
<td>Chainage</td>
<td>1310–2075</td>
<td>3.0</td>
<td>2022</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Realignment/upgrade</td>
<td></td>
<td>$1,000,000</td>
</tr>
</tbody>
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*Schedule of Works from Priority Infrastructure Plan
Future Local Government Trunk Road Upgrades*
Scenario Cont’d

Council has planned an upgrade to Wider Road under the PIP, but only in 2022. An Applicant seeks approval for a proposal inconsistent with Council’s development sequence. An IA is therefore prepared to ‘bring forward’ the construction of this road, which is required to service the development.

A community centre and pool is envisaged for a residential population under the PIP. An Applicant seeks approval for a proposal inconsistent with Council’s development sequence. An IA can be used to secure the dedication of land and a refund mechanism if the land value exceeds the Applicant’s contribution towards open space.
Important things to know about Infrastructure Agreements

- Can not be used as a bargaining tool for development approval – i.e. the making of the agreement should not interfere with the assessment of the development application in accordance with the SPA.

- Timing issues – it is important that infrastructure agreements deal with the overall timeframe for infrastructure provision.
Important things to know about Infrastructure Agreements (Cont’d)

- IA’s bind successors in title – i.e. the obligations of the landowners under an agreement are attached to the land and will be binding on the owners and owners’ successors in title.

- Infrastructure charges under an infrastructure charging instrument can still be charged by local government where an IA is in place. The IA overrides an infrastructure charges notice where there is an inconsistency.
General structure of a typical IA

An IA will typically contain the following information:

- Matters about interpretation (definitions, issues about inconsistencies, application, relationship with SPA, details about the parties);
- Timing (commencement date and term of agreement);
- Obligations of parties;
- Intent of Agreement (i.e. details of the infrastructure, land / monetary contributions to be provided, or deferred infrastructure charges strategy);
- Details about security, interest, GST, dispute resolution, default and payment details.
Case Study 1 – Tourism Development

- Special Facility Zoning for Tourist Development approved in early 1990’s.
- Locality serviced by road though no higher order services.
- Development proposed significant tourist accommodation, a retail component, clubhouse and other facilities.
- Condition of approval sought road contributions for the entire development totalling $77,000 without indexation.
- Council refused extensions to original superseded development and ROL.
- Applicant and Council acknowledged degree of risk in court action
- WOP discussions resulted in IA
  - original road contributions set aside
  - applicant to pay the current infrastructure charges rate for short term accommodation
  - Council set aside the IC’s applicable for the retail and commercial component of the development.
- IA facilitated an approval for a substantive tourist development for the area and Council in turn received a more equitable infrastructure payment.
Case Study 2 – Quarry Development

- Council approval of MCU to extract 1.5M tonnes per annum of hard rock.
- Council imposed condition requiring design and construction of part of a town centre bypass.
- Applicant negotiated on reasonableness of condition.
- IA established:
  - Applicant donate untested materials for sub-base
  - Applicant provides road construction material at cost for town bypass
- IA facilitated provision of material significant to bypass and enabled quarry expansion to commence.
Conclusion

- IA’s are an important mechanism for achieving infrastructure outcomes under the SPA, in particular for “out of sequence” development;
- Useful for large master planned developments which require considerable and staged investment in infrastructure (e.g. Bromelton).
- Can benefit the public in assisting in the facilitation of community infrastructure such as community centres and parks.